CHAPTER XIII.

DEFAMATION.

EVERY man has an absolute right to have his reputation preserved inviolate. This right of reputation is acknowledged as an inherent personal right of every person. It is a *jus in rem*, a right absolute and good against all the world. A man's reputation is his property, and, if possible, more valuable than other property (per Malins, V. C., in *Dixon* v. *Holden*, L. R. 7 Eq. 492). Indeed, if we reflect on the degree of suffering occasioned by loss of character, and compare it with that occasioned by loss of property, the amount of the former injury far exceeds that of the latter (per Best, C. J., in *De Crespigny* v. *Wellesley*, 5 Bing. 406).

The wrong of **defamation** may be committed either by way of speech, or by way of writing, or its equivalent. The term 'slander' is used for the former kind of utterances, 'libel' for the latter. Slander is a spoken, and libel is a written, defamation.

A **libel** consists in the publication of a false and defamatory statement, expressed in printing or writing, or by signs, pictures, &c., tending to injure the reputation of another, and thereby exposing such person to public hatred, contempt, or ridicule. Everything, printed or written, which reflects on the character of another, and is published *without lawful justification or excuse*, (*i. e.*, maliciously, as it is sometimes said) is a libel, *whatever* the intention may have been (*O'Brien* v. *Clement*, 15 M. & W. 432; *De Renzy* v. *Griffin*, P. R. 8 of 1870).

A **slander** is a false and defamatory verbal statement tending to injure the reputation of another.

Distinctions between Libel and Slander.—1. Libel is a criminal offence as well as a civil wrong. Slander is a civil wrong only; though the words may happen to come within the criminal law as being blasphemous, seditious, or obscene, or as being a solicitation to commit a crime, or as being a contempt of Court (per Lush, J., in *R.* v. *Holbrook*, 4 Q. B. D. 46).

2. In a case of libel the law presumes that the person defamed has suffered damage, and, in the absence of legal justification or excuse, it is wrongful as against the person defamed. A libel is of itself an infringement of a right and no actual damage need be proved in order to sustain an action. Slander is actionable only when special damage can be proved to have been its natural consequence, or when it conveys certain imputations.

3. Libel is addressed to the eye, slander to the ear.

4. In the case of libel the defamatory matter is in some permanent form—in writing or printing, *e.g.*, a statue, effigy, caricature, signs or pictures, marks on a wall. Slander is in its nature transient, and is in the form of spoken words or significant gestures (*King* v. *Lake*, 2 Vent. 28; Hardes 470; *Kelly* v. *O'Malley*, 6 T. L. R. 64).

5. A slander may be uttered in the heat of the moment, and under a sudden provocation; the reduction of the charge into writing and its subsequent publication in the permanent form of a libel show greater deliberation and raise a suggestion of malice (*Bradley* v. *Methwyn*, Selw. N. P. 982; *Cook* v. *Ward*, 6 Bing. 409; *Dalby* v. *Newnes*, 3 T. L. 393). An action may be maintained for words written, for which an action could not be maintained if they were merely spoken (*Thorley* v. *Lord Kerry*, 3 Camp. 214).

6. The actual publisher of a libel may be an innocent porter or messenger, a mere hand, unconscious of the nature of his act, and for which therefore his employers

shall be held liable, and not he. Whereas in every case of the republication of a slander, the publisher acts conciously and voluntarily; the repetition is his own act (*Odgers*). He is, therefore, liable.

A man may be guilty both of libel and of slander at the same moment and by the same act, as, by reading to a public meeting a defamatory paper written by another (*Hearne* v. *Stowell*, 4 P. & D. 696).

Libel.

In order to found an action for libel it must be proved that the statement complained of is—(1) false, (2) defamatory, and (3) published.

1. False.—The plaintiff must allege the falsity of the imputation conveyed by the writing, picture, or words. If a man is proved to have stated that which he knew to be false no one need inquire further. Every body assumes thenceforth that he was malicious, that he did a wrong thing from some wrong motive (per Brett, L. J., in *Clark* v. *Molyneux*, 3 Q. B. D. 247; *Ratan* v. *Bhaga*, (1896) P. J. 376; see *Dhurmo Doss* v. *Koylash*, 12 W. R. 372).

2. Defamatory.—(*a*) In cases of libel, any words will be deemed defamatory which expose the plaintiff to hatred, contempt, ridicule, or obloquy, which tend to injure him in his possession or trade, or cause him to be shunned or avoided by his neighbours.

In order to determine whether a statement is defamatory it must be construed in its natural and ordinary meaning; if not defamatory in such meaning, it must be construed in the special meaning, if any, in which it was understood by the persons by whom and to whom it was published (*Capital & Counties Bank* v. *Henty*, 7 App. Cas. 741).

If the word is an ordinary English word, then the Court will construe it in its natural meaning, unless some other is shewn to have been given it. If the word is a cant expression or a commercial term (*Smith* v. *Jeffreys*, 15 M. & W. 561) then the meaning may depend upon the circumstances in evidence (per Bramwell, B., in *Barnett* v. *Allen*, 27 L. J. Ex. 414). The burden of proof is on the party who alleges that the words were understood in a meaning other than their natural and ordinary meaning.

Where the words are not *prima facie* defamatory, but the plaintiff intends to maintain that the words were defamatory by reason of their being understood in a special sense, he must insert an averment, called an *innuendo*, from the old form of pleading. It is the office of an *innuendo* to define the defamatory meaning which the plaintiff sets on the words; to show how they come to have that defamatory meaning; and also to show how they relate to the plaintiff, whenever that is not clear on the face of them (*Odgers*). No *innuendo* is necessary where the words complained of are defamatory in their ordinary meaning.

The mere intention to vex and annoy will not make language defamatory which is not so in its own nature. An imputation of conduct not in itself really censurable, however distasteful or objectionable the conduct may be according to the notion of certain people, is not a legal injury (*Clay* v. *Roberts*, 6 L. T. N. S. 398).

(*b*). The defamatory words must refer to some ascertained or ascertainable person, and that person must be the plaintiff (*Odgers*).

If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual (per Willes, J., in *Eastwood* v. *Holmes*, 1 F. & F. 349). And provided that the

plaintiff can satisfy the jury that he was especially referred to, it is sufficient whether the words complained of describe him by his own name, or its initial letter (*Roach* v. *Garvan*, 2 Atk. 469; *O'Brien* v. *Clement*, 15 M. & W. 435), or by asterisks (*Bourke* v. *Warren*, 2 C. & P. 307), or by a fictitious name (*R.* v. *Clerk*, 1 Barn. 304), or by the name of somebody else (*Levis* v. *Milne*, 4 Bing. 195), or merely refer to a definite body of persons of which he is a member, for "if those who look on know well who is aimed at, the very same iujury is inflicted, the very same thing is in fact done, as would be done if his name and Christian name were ten times repeated" (per Lord Campbell, C. J., in *Le Fanu* v. *Malcolmson*, 1 H. L. 688). But where it is uncertain whether the plaintiff was the particular individual aimed at, no action lies, *e.g.*, where after the trial of an action at which there were three witnesses, the defendant said, "one of you three has perjured," it was held that no action lay, as there was nothing to show that the plaintiff was the particular witness referred to (*Fraser*, *L.* & *S.*, 5, 6.

(*c*). Further the words complained of must concern the plaintiff. They must affect his character or touch him in the way of his office, profession, or trade. If they are directed solely at the plaintiff's goods, or his title to property, though an action may lie therefor, it is not an action of libel or slander, but "an action on the case for special damages sustained by reason of the speaking or publication" (per Tindal, C. J., in *Malachy* v. *Soper*, 3 Bing. N. C. 384). In some cases, however, an attack on a man's title to property or goods may also injuriously affect his reputation. Thus, it is libellous to write and publish of a bookseller that he sells immoral poems (*Tabart* v. *Tipper*, 1 Camp. 350), and to say of a wine merchant that his wine is poisoned, or of a tea-dealer that his tea is made

green by drying it on copper (*Ingram* v. *Lawson*, 6 Bing. 216—*Fraser*, *L.* & *S.*, 3). To impute to any one who holds an office or profession that he is unfit therefor, or that he has acted improperly therein, is libellous.

No one can be libelled in respect of an office which he has ceased to fill, or a vocation which he has ceased to follow, but imputations against a man in some particular relation may also affect him in his general character. If it be alleged of a retired solicitor, that he was guilty of sharp practice in his profession, he is not libelled as a solicitor, for he is no longer one, but he is libelled as a man, for he is accused of dishonesty (*Boydell* v. *Jones*, 4 M. & W. 450).

Judge and Jury—In England, it is for the Judge to say whether the words are capable of a defamatory meaning, but for the Jury to say whether under the circumtances of the case they in fact bear that meaning (*Capital & Counties Bank* v. *Henty*, 7 App. Cas. 747).

It is libellous to write and publish of a man that he is an infernal villain (*Bell* v. *Stone*, 1 B. & P. 331); an insane (*Morgan* v. *Lingen*, 8 L. T. 800); a hypocrite (*Thorley* v. *Lord Kerry*, 4 Taunt. 355); an insolvent or impecunious (*Metr. Omnibus Co.* v. *Hawkins*, 2 H. & N. 87); a dishonest man (*Austin* v. *Culpepher*, Skin. 123); an impostor (*Campbell* v. *Spottiswoode*, 3 B. & S. 769; *Cooke* v. *Hughes*, R. & M. 112); a man of gross misconduct (*Clement* v. *Chivis*, 9 B. & C. 172); a frozen snake (*Hoare* v. *Silverlock*, L. R. 12 Q. B. 624); an itchy old toad (*Villers* v. *Monsley*, 2 Wils. 403); a man of straw (*Eaten* v. *Jones* 1 Dowl. N. S. 602); ungrateful (*Cox* v. *Lee*, 4 Ex. 384); cheating at dice (*Greville* v. *Chapman*, 5 Q. B. 744); unfit to be trusted with money (*Cheese* v. *Scales*, 10 M. & W. 488); or a great defaulter (*Warman* v. *Hine*, 1 Jur. 820).

It is libellous to publish that certain quack medicines were prepared by a physician of eminence (*Clark* v. *Freeman*, 11 Beav. 117); or a newspaper proprietor is 'a libellous journalist' (*Wakely* v. *Cook*, 4 Ex. 518); or a barrister is 'a quack lawyer and a mountebank' and 'an impostor' (*Wakley* v. *Healey*, 7 C. B. 591; *Sir W. Garrow's case*, 3 Chit. Cr. L. 884).

An obituary notice of a living person (*McBride* v. *Ellis*, 9 Mich. 313); and an irionical praise (*Boydell* v. *Jones*, 1 H. & H. 408; *R.* v. *Brown*, Holt 425; *Sir Baptist Hick's case*, Poph. 139) may be libels. A caricature or scandalous painting (*Du Bost* v. *Baresford*, 2 Camp. 511); a chalk-mark

on a wall (*Mortineer* v. *McCallan*, 6 M. & W. 58; *Tarpley* v. *Blaby*, 7 C. & P. 395); burning a man in effigy (*Eyre* v. *Garlick*, 42 J. P. 68); a statute (Hawkins P. C.); a gallows at the doorway of some obnoxious person (*Carr* v. *Hood*, 1 Camp. 355) may become libels. The exhibition of the waxen effigy of a person who has been tried for murder and acquitted, in company with the effigy of notorious criminals, may be defamatory, because this shows that although not found guilty he was a criminal himself (*Monson* v. *Fussand* (1894) 1 Q. B. 254).

To publish falsely on placards or newspapers, or through the medium of letters, or writings, of a publican, that his license has been refused (*Bignell* v. *Buzzard*, 3 H. & N. 217), or of a tradesman that he knowingly sells bad articles, or of a gun-smith or manufacturer, that he is a bad workman and unable to turn out a good one is actionable; but mere puffs between rival tradesman, the one depreciating the other's wares and exalting his own above them, are defensible (*Harman* v. *Delany*, 1 Barnard 259; Fitz. 121; *Evans* v. *Harlow*, 5 Q. B. 624; *Heriot* v. *Stuart*, 1 Esp. 437; *Young* v. *Macrae*, 3 B. & S. 264), eventhough the statements are untrue and cause loss to others (*Hubbuck & Co.* v. *Wilkinson & Co.*, (1899) 1 Q. B. 86). Inserting the plaintiff's name under the head of "First meetings under the Bankruptcy Act" was held to be libellous, because it showed that the plaintiff had become a bankrupt or taken proceedings in liquidation (*Shepheard* v. *Whitaker*, L. R. 10 C. P. 502). Where a trade journal published a list headed 'County Court Judgments,' in which appeared a judgment against the plaintiff, which had, in point of fact, been discharged, although it remained on the County Court Register, it was held that although it was true that there was such a judgment, yet there was evidence from which it might be inferred that it remained undischarged, and that consequently the plaintiff was a person in bad credit (*Williams* v. *Smith*, 22 Q. B. D. 134). Had the trade journal appended a note, that its readers were not to assume that the judgments in the list remained unsatisfied, the decision would have been the other way (*Scarles* v. *Scarlett*, (1892) 2 Q. B. 56).

Indian cases.—Making and publicly exhibiting an effigy of a person, calling it by the person's name, and beating it with shoes, are acts amounting to defamation of character for which a suit for recovery of damages will lie (*Pitumber Doss* v. *Dwarka Pershad*, 2 N. W. P. 435). The mere failure of a complainant in proving a *bona fide* criminal charge does not make him liable to an action for damages for defamation (*Brojonath* v. *Kishen Loll*, 5 W. R. 282). Defendant falsely and maliciously published statements to the effect that plaintiff's wife was a woman of low caste, between which and the plaintiff's own caste intermarriage and intercourse of any kind were prohibited: upon this the plaintiff's brotherhood

expelled him and his wife from caste. Held, that the above facts furnished ample grounds for an action for defamation (*Sant* v. *Bhag Mal*, P. R. 140 of 1882).

Leading case.—**Capital & County Bank v. Henty.**

3. **Publication.**—The making known, knowingly or negligently, of a libel or slander to any person, other than the object of it, is publication in its legal sense. "If the statement is sent straight to the person of whom it is written, there is no publication of it" (per Esher, M. R., in *Pullman* v. *Hill*, (1891) 1 Q. B. 527). For that cannot injure his reputation, though it may injure his self-esteem. A man's reputation is the estimate in which others hold him, not the good opinion which he has of himself. Hence, the words complained of should be communicated to some person other than the plaintiff (*Barrow* v. *Lewellin*, Hob. 62; *Pullman* v. *Hill*, *sup.*)

The fact that the defendant desired and intended publication to a third person is not a sufficient ground for an action. The plaintiff must prove a publication in fact, and not merely in intention. There is no publication if the person into whose hands a libellous communication has come has never read it (per Lord Herschell, in *Browne* v. *Dunn* (1893), 6 R. 67).

Again, the publication must be without just cause or without excuse (*i. e.*, malicious as it is sometimes called), or on an "unprivileged occasion."

"That unfortunate word 'malice' has got into cases of actions for libel. We all know that a man may be the publisher of a libel without a particle of malice or improper motive. Therefore the case is not the same as where actual and real malice is necessary. Take the case where a person may make an untrue statement of a man in writing, not privileged on account of the occasion of its publication; he would be liable although he had not a particle of malice

against the man" (per Lord Bramwell, in *Abrath* v. *N. E. Ry.*, 11 App. 253). Again, "if a man is proved to have stated that which he knew to be false, no one need inquire further. Everybody assumes thenceforth that he was malicious, and that he did a wrong thing from some wrong motive" (per Brett, L. J., in *Clark* v. *Molyneax*, L. R. 3 Q. B. p. 247).

The law will infer malice where a statement is deliberately false in fact and injurious to the character of another, and the publication is not privileged (*Peter* v. *Dufour*, 6 W. R. 92).

The actionable or innocent character of words depends not on the intention with which they were published, but on their actual meaning and tendency when published, and the defendant will not be excused on the ground that he published the libel by accident or mistake (*Blake* v. *Stevens*, 4 F. & F. 232; *Shepheard* v. *Whittaker*, L. R. 10 C. P. 502), or in jest (*Donoghue* v. *Hayes*, Haye's Ir. Ex. Rep. 265), or with an honest belief in its truth (*Blackburn* v. *Blackburn*, 3 C. & P. 146).

Judge and Jury.—In England, as regards the question of publication, it is for the jury to find whether the facts on which it is endeavoured to prove publication are true, but for the Judge to decide whether the facts as proved constitute a publication.

Publication.—If the libel be contained in a telegram (*Whitfield* v. *S. E. Ry.*, E. B. & E. 115) or be written on a post-card (*Robinson* v. *Jones*, 4 L. R. Ir. 391; *Beamish* v. *Dairy Supply Co. Ld.*, 13 T. R. 484), that is publication, eventhough they be addressed to the party libelled. It was never meant by the legislature that these facilities for postal and telegraphic communication should be used for the purpose of more easily disseminating libels. Where there is such a publication, it avoids the privilege, because it is communicated through unprivileged persons (per Brett, J., in *Williamson* v. *Freer*, L. R. 9 C. P. 393; *Chattel* v. *Turner*, 12 L. T. 360). The defendant sent a post-card through the post on an occasion which, as between the defendant and the person to whom it was sent, was privileged.

The statements contained in the post-card had reference to the plaintiff, and would, if connected with him, have been defamatory of him, but the post-card did not disclose the plaintiff's name or contain any indication that the statements in it referred to him. Held, that this was no publication (*Sadgrove* v. *Hole*, (1901) 2 K. B. 1). If the defendant knows that it is the habit of plaintiff's clerk to open his letters in his absence and in point of fact the clerk does open the letter, which contains the libellous matter, he will be liable (*Delacroix* v. *Thevenot*, 2 Stark. 63; *Gomersall* v. *Davies*, 14 T. R. 430). Dictating a libellous letter to a type-writer and giving it to an office boy to make a press-copy is publication (*Pullman* v. *Hill*, (1891) 1 Q. B. 524; *Gordon* v. *Street*, 69 L. J. Q. B. 45). But where a firm of solicitors, acting for a client, addressed a letter containing defamatory matter to the plaintiff, and the letter was dictated to their short-hand writer clerk, and copied into the press-book by another clerk in their employment; it was held that the occasion was privileged and the solicitors were not liable (*Boxsius* v. *Goblet*, (1894) 1 Q. B. 842).

Sending a defamatory letter to a wife about her husband is sufficient publication to sustain an action (*Wenman* v. *Ash*, 13 C. B. 836; *Jones* v. *Williams*, 1 T. L. R. 572), and it is submitted that similarly a communication to the husband of a charge against his wife is a sufficient publication (*Odgers*).

Where the plaintiff told some friends an absurd story about himself, and the defendant published it in his newspaper, simply for the purpose of amusing his readers, and believing that the plaintiff would not object; the defendant was held liable (*Cook* v. *Ward*, 6 Bing. 409). The plaintiff obtained £100, as damages against the defendants for the publication of a libellous statement, which had been inserted by mistake in a law book of which they were the publishers (*Blake* v. *Stevens*, 11 L. T. N. S. 543).

Where by the defendant's negligence a privileged communication, intended to be made to A, was in fact placed in an envelope directed to B, whereby the defamatory matter was published to B, the defendant was held liable, though there was no malice (*Hebditch* v. *MacIlvain*, (1894) 2 Q. B. 54; overruling *Thompson* v. *Dashwood*, 11 Q. B. D. 43).

Indian case.—The Trustees of the Port of Bombay, bound to keep minutes of their proceedings and resolutions and to forward copies of such minutes to the Secretary to the Local Government, passed the following resolution:—"Mr. Shepherd's (the plaintiff's) offer of Rs. 520 in full satisfaction of all claims should be accepted, but any further transactions with him should be avoided if possible." Copies of this resolution, made by clerks in the employ of the Trustees, were recorded in two books kept in the office of the Trustees and other copies, also made by such clerks, were forwarded to the Secretary to the Local Government and the plaintiff himself. Held, (1) that the words of the resolution amounted in law to a libel; (2) that the act of

the Trustees in transmitting a copy to the Secretary was a publication of the libel; but (3) that such publication was privileged (*Shepherd* v. *The Trustees of the Port of Bombay*, 1 Bom. 477).

A letter was written by order of the manager of a firm reflecting upon the character of a professional man, and signed by the manager and handed over in the ordinary way to a clerk in the office to copy in the office copy letter book, which was open to all the members of the firm. Held, that such instructions to copy amounted to publication (*Heckford* v. *Galstin*, 2 Hyde 274).

Where the defendant posted a newspaper (alleged to contain a libel upon the plaintiff) at Agra, addressed to C at Lahore, and the newspaper was delivered to C's servant at Lahore, and forwarded by him unopened to his master at Amritsar (where C was temporarily staying). Held, that the publication was at Lahore, and the civil Court at that place had jurisdiction to entertain the suit (*Dingo* v. *Kirby*, P. R. 33 of 1874).

No publication.—Where the defendant despatched a sealed letter through the post to the plaintiff it was held that there was no publication (*Barrow* v. *Lewellin*, Hob. 62). The uttering of a libel by a husband to his wife is no publication, because in the eye of the law husband and wife are one person (*Wennhak* v. *Morgan*, 20 Q. B. D. 637; *Phillips* v. *Barnett*, 1 Q. B. D. 436). Similarly, if a husband write a libel and hand it to his wife, and she hand it to the person libelled, this is no publication to sustain an action for libel against the husband and his wife, they being but one person in law (*Folkard*).

Indian cases.—A brought an action against B for damagas for libellous matter contained in a letter written and sent as an ordinary private letter by post by B to A. No publication was alleged or proved, and the only damage alleged was injury to A's feelings. Held, that no suit lay (*Kamal Chandra* v. *Nobin Chandra*, 10 W. R. 184: 1 B. L. R. 12; *Mahomed Ismail* v. *Mahomed Jahir*, 6 N. W. P. 38).

Newspaper libel.—If a libel appear in a newspaper, the proprietor, the editor, the printer, and the publisher, are liable to be sued, either separately or together. In all cases of joint publication each defendant is liable for all the ensuing damage. Where the libel is contained in a newspaper the sale of each copy of the newspaper containing the libel is *prima facie* a publication thereof, rendering the distributor as well as principal responsible for the libel. But the defendant is excused if he can prove (1) that he did not know that it contained a libel; (2) that his ignorance

was not due to any negligence on his own part; and (3) that he did not know, and had no ground for supposing, that the newspaper was likely to contain libellous matter (*Emmens* v. *Pottle*, 16 Q. B. D. 354). If he proves these three facts, he will not be deemed to have published it. In a recent case it has been remarked, though not expressly decided, that the doctrine of *Emmens* v. *Pottle* is only applicable where the defendant is a person who is not the printer or the first or main publisher of a work which contains a libel, but has only taken a subordinate part in disseminating it (per Romer, L. J., in *Vizetely* v. *Mudie's Select Library*, (1900) 2 Q. B. 170, 180).

Every sale of a newspaper to a person sent to purchase it is a fresh publication (*Lawless* v. *The Anglo Egyptian &c. Co.*, 10 B. & S. 226). If a man wraps a newspaper, and sends it into another country by a boy, the man who sends the paper is the publisher of it, and not the boy, who being ignorant of the contents of the newspaper, is the innocent agent in the transaction (*R.* v. *Burdett*, 4 B. & Ald. 126). The proprietors of a circulating library circulated copies of a book which, unknown to them, contained a libel on the plaintiff. In an action brought against them they failed to prove that it was not through negligence on their part that they did not know that the book contained the libel when they circulated it. Held, that they were liable as publishers of the libel (*Vizetely* v. *Mudie's Select Library*, *sup.*).

Slander.

I. ENGLISH LAW.

As in the case of libel, it must be proved that the words complained of are (1) false, (2) defamatory, and (3) published. But in addition to these requisites it must be shewn that some special damage has, in fact, resulted from their use. Such special damage must again be a legal and natural consequence of the slander (*Vicars* v. *Wilcock*, 8 East 1). The loss complained of must be such as might fairly and reasonably have been anticipated from the slander (*Lynch* v. *Knight*, 9 H. L. 577), *e. g.*, the loss of a

client (*King* v. *Watts*, 8 C. & P. 614; *Brown* v. *Smith*, 22 L. J. C. P. 151), or customer (*Storey* v. *Challands*, 8 C. & P. 234), or the loss (*Payne* v. *Beawmorris*, 1 Lev. 248) or refusal (*Sterry* v. *Foreman*, 2 C. & P. 592) of some appointment or employment (*Martin* v. *Strong*, 5 A. & E. 535; *Rumsey* v. *Webb*, 11 L. J. C. P. 129), or the loss of a gift whether pecuniary (*Corcoran* v. *Corcoran*, 7 L. R. Ir. 272), or otherwise (*Hartley* v. *Herring*, 8 T. R. 130), or of gratuitous hospitality (*Moore* v. *Meagher*, 1 Taunt. 39), for a dinner at a friend's expense is a thing of some temporal value (*Davies* v. *Solomon*, L. R. 7 Q. B. 112), or the loss of a marriage (*Davis* v. *Gardiner*, 4 Rep. 16) or of the consortium of one's husband is enough (*Lynch* v. *Knight*, 9 H. L. 589). Where the statement complained of "in its very nature is intended, or reasonably likely to produce, and in the ordinary course of things does produce, a general loss of business, as distinct from the loss of this or that known customer, evidence of such general decline of business is admissible," and is sufficient to support an action for slander (*Ratcliffe* v. *Evans*, (1892) 2 Q. B. 533).

The printing and publishing by a third party of oral slander renders the person who prints or writes and publishes the slander, and all aiding or assisting him, liable to an action, although the originator, who merely spoke the slander will not be liable (*McGregor* v. *Thwaites*, 3 B. & C. 35).

Actionable.—Where the plaintiff was chaplain to a peer, and the defendant falsely alleged of him that he had a bastard, whereby he lost the chaplaincy, it was held that the plaintiff was entitled to maintain an action for compensation in damages on the ground that the chaplaincy was a temporal preferment (*Payne* v. *Beanmorris*, 1 Lev. 248). An action was brought by a trader, alleging that defendant falsely and maliciously spoke and published of his wife, who assisted him in the business, certain words accusing her of having committed adultery upon the premises where he resided and carried on his business, whereby he was injured in his business, it was held that it

was maintainable on the ground that the injury to his business was a special damage, the natural consequence of the words (*Riding* v. *Smith*, 1 Ex. D. 91).

Non-actionable.—To call a man a scoundrel; or a black-guard; or a swindler (*Savile* v. *Jardine*, 2 H. B. 531; *Ward* v. *Weeks*, 4 M. & P. 796); or a cheat (*Savage* v. *Robery*, 2 Salk. 694); or a rogue, a rascal, or a villain (*Stanhope* v. *Blith*, 4 Rep. 15); or a runagate (*Cockane* v. *Hopkins*, 2 Lev. 214); or a cozener (*Brunkard* v. *Segar*, Hutt. 13); or a common-filcher (*Goodale* v. *Castle*, Cro. Eiz. 554); or to say of a man "you are a low fellow, a disgrace to the town, and unfit for decent society, on account of your conduct with whores" (*Lumbey* v. *Allday*, 1 Cr. & J. 310) is not actionable *per se*. Neither is it actionable to call a man a black-leg, unless it is shown that by the use of the term the defendant intended to impute to the plaintiff that he is a cheating gambler (*Barnett* v. *Allen*, 3 H. & N. 376); nor to say of a young lady that she is a notorious liar, an infamous wretch, and has been all but seduced by a notorious libertine (*Lynch* v. *Knight*, 9 H. L. 577). The words "he is a rogue and has cheated his brother-in-law of upwards of £2,000," are not actionable (*Hopwood* v. *Thorn*, 8 C. B. 313).

Where the plaintiff alleged that he had engaged Madame Mara to sing at his oratorio, and that the defendant published a libel concerning her, in consequence of which she was prevented from singing, from an apprehension of being hissed, whereby the plaintiff lost the benefit of her services; it was held that the injury complained of was too remote, and not to be connected with the cause assigned for it; that if the libel was injurious to Madame Mara, she might have an action for it, but her refusing to perform might have proceeded from groundless apprehension or mere caprice, and not from the publication of the libel; and the plaintiff therefore was non-suited (*Ashley* v. *Harrison*, 1 Esp. 48). So, where the plaintiff was the candidate for membership of a club, and was not elected on a ballot, and afterwards upon a meeting being called to consider the rules of the club, the defendant spoke certain words, not actionable in themselves, of the plaintiff, whereby he induced the majority of the members to retain the rules under which the plaintiff had been rejected, it was held that the damage was not pecuniary, and was incapable of being estimated in money, and was not the natural or probable consequence of the defendant's words (*Chamberlain* v. *Boyd*, 11 Q. B. D. 407).

An action of slander may be maintained, without proof of special damage, in the following cases:—

1. If a criminal offence (not necessarily an indictable offence) be imputed to the plaintiff (*Webb* v. *Beavan*, 11 Q. B. D. 609).

2. If a contagious or infectious disorder, tending to exclude the plaintiff from society, be imputed to him (*Villers* v. *Monsley*, 2 Wils. 403).

3. If any injurious imputation be made, affecting the plaintiff in his office, profession, trade, or business (*Starkie*; *Humphress* v. *Stanfield*, Cro. Car. 469).

4. If the plaintiff is a woman or girl, and the words impute unchastity or adultery to her (Slander of Women Act 1891, 54 & 55 Vic. c. 51).

In the above cases the imputation cast on the plaintiff is on the face of it so injurious that the Court will presume, without any proof, that his reputation has been thereby impaired. Spoken words which afford a cause of action without proof of special damage are said to be actionable *per se*.

1. Crime.—Where the words contain an express imputation of any crime or misdemeanour for which *corporal* punishment may be inflicted, they are actionable without proof of special damage. But where the penalty for an offence is merely *pecuniary*, it does not appear that an action will lie for charging it; eventhough in default of payment, imprisonment should be prescribed by the statute; imprisonment not being the primary and immediate punishment for the offence (*Odgen* v. *Turner*, 6 Mod. 104).

The offence need not be specified with legal precision, indeed it need not be specified at all if the words impute felony generally.

Words merely imputing suspicion of a crime are not actionable without proof of special damage (*Simmons* v. *Mitchell*, 6 App. Cas. 156). The allegation must be a direct charge of punishable crime (*Lemon* v. *Simons*, 57 L. J. Q. B. 260). If words charging crime are accompanied by an express allusion to a transaction which merely amounts to

a civil injury they are not actionable (*Thompson* v. *Barnard*, 1 Camp. 48).

It is not necessary that the words should accuse the plaintiff of some fresh, undiscovered crime, so as to put him in jeopardy or cause his arrest (*Odgers*).

Actionable.—A general charge of felony is actionable, though it does not specify any particular felony, *e. g.*, "I am thoroughly convinced that you are guilty of the death of F, and rather than you should go without a hangman, I will hang you," said after a verdict of not-guilty (*Peake* v. *Oldham*, W. Bl. 960; Cowp. 275);" "if you had had your deserts, you would have been hanged before now" (*Donne's case*, Cro. Eliz. 62); "he deserves to have his ears nailed to a pillory" (*Jenkinson* v. *Mayne*, 1 Vin. Abr. 415); "you have committed an act for which I can transport you" (*Curtis* v. *Curtis*, 3 M. & S. 819); "you have done many things for which you ought to be hanged" (*Francis* v. *Roose*, 1 H. & H. 36); "you are a rogue, and I will prove you a rogue for you forged my name" (*Jones* v. *Hearne*, 2 Wils. 89); and "to call a person a felon," after he is discharged (*Leyman* v. *Latimer*, 3 Ex. D. 352).

Charges of specific felonies such as—assault with intent to rob (*Lewkor* v. *Churchley*, Cro. Car. 140); attempt to murder (*Scott* v. *Hilliar*, Lane 98); bigamy (*Hening* v. *Power*, 10 M. & W. 564); burglary (*Somers* v. *House*, Holt. 39); demanding money with menaces (*Neve* v. *Cross*, Sty. 350); embezzlement (*Williams* v. *Scott*, 1 C. & M. 675); forgery (*Baal* v. *Baggerley*, Cro. Car. 326); larceny (*Tomlinson* v. *Brittlebank*, 4 B. & A. 630); manslaughter (*Ford* v. *Primrose*, 5 D. & R. 287; *Edsall* v. *Russell*, 4 M. & G. 1090); murder (*Button* v. *Heyward*, 8 Mod. 24); receiving stolen goods knowing them to be so (*Briggs' case*, Godd. 157; *Clarke's case*, 2 Rolls Rep. 136; *Alfred* v. *Farlow*, 8 Q. B. D. 854); robbery (*Rowcliff* v. *Edmonds*, 7 M. & W. 13; *Lawrence* v. *Woodward*, 1 Roll. Abr. 74); treason (*Fry* v. *Carne*, 8 Mod. 283); and unnatural offences (*Colman* v. *Godwin*, 3 Doug. 90), were all held to be actionable. Similarly the charges of the following misdemeanours were held to be actionable: bribery and corruption (*Bendish* v. *Lindsay*, 11 Mod. 194); conspiracy (*Tibbott* v. *Hayes*, Cro. Eliz. 191); keeping a bawdy-house (*Huckle* v. *Reynolds*, 7 C. B. N. S. 114; *Brayne* v. *Cooper*, 5 M. & W. 250); libel (*Russell* v. *Ligon*, 1 Roll. Abr. 46); perjury (*Roberts* v. *Camden*, 9 East 93); soliciting another to commit a crime (*Deane* v. *Eton*, 1 Buls. 201); subornation of perjury (*Bridges* v. *Playdell*, B. & G. 2); the careless or unskilful administration of mercury or any other poisonous or dangerous drug, and thereby causing death (*Edsall* v. *Russell*, 4 M. & G. 1090).

Indian case.—Where a slander consisted of the statement that the plaint-

iff had connection with the wife of a *mhar*, it was held that the defendant was liable as the defamatory words imputed to the plaintiff what amounted to an offence in India (*Ratan* v. *Bhaga*, (1896) P. J. 376).

Not actionable.—Saying of the plaintiff that he has foresworn himself, and that the defendant had three evidences that would prove it, is not actionable without showing that the words were spoken with reference to some judicial proceeding in which the plaintiff had been sworn (*Holt* v. *Scholefield*, 6 T. R. 691). Words imputing an impossible crime as, "thou hast killed my wife," who was alive at the time, are not actionable (*Snag* v. *Gee*, 4 Rep. 16). To call a man a thief would *prima facie* be actionable without allegation of special damage; but if it be in evidence that the words were used merely as abuse and not as conveying the imputation of actual theft having been committed by the plaintiff, there is no cause of action (*Christie* v. *Cowell*, 1 Peake N. P. C. 5). Where the defendant called the plaintiff a "welcher (meaning a person who dishonestly appropriates and embezzles money deposited with him);" and the evidence showed that a "welcher" is a person who receives money which has been deposited to abide the event of a race, and who has a predetermined intention to keep the money for himself, it was held that, as the word did not necessarily impute the offence of embezzlement, it did not imply a criminal offence, and so was not actionable without special damage (*Blackman* v. *Bryant*, 27 L. T. 491).

Leading cases.—**Peake v. Oldham; Holt v. Scholefield.**

2. **Contagious disease.**—Words imputing to the plaintiff that he *has* an infectious or contagious disease are actionable without proof of special damage. For the effect of such an imputation is naturally to exclude the plaintiff from society. Such disease may be either leprosy, venereal disease (*Watson* v. *McCarthy*, 2 Kelly 57), or the plague; but not itch, falling sickness, or small-pox (*Villars* v. *Monsley*, 2 Wils. 403), which are less infectious. The words must distinctly impute that the plaintiff *has* the disease at the *time of speaking them*: an assertion that he *has had* such a disease would not cause him to be shunned by society and the gist of the action fails (*Taylor* v. *Hall*, 2 Str. 1189; *Bloodworth* v. *Gray*, 7 M. & G. 334; *Carslake* v. *Mapledoram*, 6 T. R. 473).

Leading case.—**Carslake v. Mapledoram.**

3. **Office, profession, or trade.**—Where words spoken of affect a plaintiff in his office, profession, or trade, and directly tend to prejudice him therein, no further proof of damage is necessary. It must be shown that he held such office, or was actively engaged in such profession or trade at the time the words were spoken (*Bellamy* v. *Burch*, 16 M. & W. 590). Otherwise, proof of special damage will be required. The words spoken must impeach his official or professional conduct or his skill or knowledge. His special office or profession need not be expressly named or referred to, if the charge made be such as must necessarily affect him in it. If a certain degree of ability, skill or training be essential to the due conduct of the plaintiff's office or profession, words denying his skill and ability, or disparaging his training, are actionable; for they imply that he is unfit to continue therein. But words which merely charge the plaintiff with some misconduct outside his office, or not connected with his special profession or trade, will not be actionable.

Office, paid and honorary.—A distinction exists between an office of profit and an office which is purely honorary. In the former case an action lies without proof of special damage for any words which impute to the holder thereof—(1) serious misconduct in the discharge of his official duties; (2) any misconduct, which, if proved against him, would be ground for depriving him of his office, whether such misconduct occur in the course of his official duties or not; and (3) general unfitness or incapacity for his office, such as want of the necessary ability, or lack of knowledge or education (*Booth* v. *Arnold* (1895) 1 Q. B. 571).

But if the office be honorary then an action lies without proof of special damage in the cases (1) and (2), but not in the third case. The implied damage is the risk of depri-

vation of the office of honour or credit which he holds (*Alexander* v. *Jenkins*, (1892) 1 Q. B. 797). Even if there is no power of removal from such office (not of profit) an action will lie for imputing misconduct to a person holding it (*Booth* v. *Arnold*, (1895) 1 Q. B. 571).

Traders.—If the plaintiff carries on any trade, an action lies for any words which relate to such trade, and "touch" or prejudice the plaintiff therein. The disparagement must be of his unfitness for business (*White* v. *Mellin*, (1895) A. C. 154), or some allegation which must necessarily injure his business (*Royal Baking Powder Co.* v. *Wright Crossley & Co.*, 15 R. P. C. 677). Any imputation on the solvency of a merchant or tradesman, any suggestion that he is or has been in pecuniary difficulties, is actionable *per se*. So is any imputation on the competency or skill of any one practising an art, *e. g.*, a watchmaker, a dentist, an architect. So if the defendant's words impute to the plaintiff cheating, dishonesty, and fraud in the conduct of his trade.

Evidence of a general loss of business, as distinct from the loss of particular known customers, is admissible, and sufficient to maintain the action (*Ratcliffe* v. *Evans*, (1892) 2 Q. B. 524).

Law.—It is actionable to charge a barrister that "he hath as much law as a jackanapes" but not "he hath no more wit than a jackanapes." The point being that law is, but wit is not, essential in the profession of a counsel (per Pollock, B., in *Arguendo*, 2 Ad. & E. 4). Words imputing to a barrister that he has wilfully and corruptly deceived his client, and revealed the secrets of his cause, or that he hath given vexatious counsel, and seeks only to fill his own pockets, without regard to the interests of his clients, are actionable (*Snag* v. *Gray*, 1 Roll. Abr. 57; *King* v. *Lake*, 2 Ventr. 28); or that he knows no law (*Banks* v. *Allen*, 1 Roll. Abr. 54) or is not fit to be a lawyer (*Peard* v. *Jones*, Cro. Car. 382). So are words imputing to a practising solicitor that he betrays the secrets of his clients (*Martyn* v. *Burlings*, Cro. Eliz. 589); or that he is acting unprofessionally (*Byrchley's case*, 4 Rep. 16); or that he is a cheat, a rogue or a knave in his profession (*Baker* v.

Morfue, 1 Sid. 327); or that "he deserves to be struck off the rolls" (*Phillips* v. *Jansen*, 2 Esp. 624). But where the defendant spoke of a solicitor, "He has gone for thousands instead of hundreds this time;" and on another occasion said: "Have yon heard anything about D. It seems to be a worse job than the other was. Miss A told me Mr. D has lost thousands. Held, that in the absence of special damage the words were not actionable as they were not reasonably capable of being construed as conveying an imputation on the plaintiff in his business as a solicitor (*Dauncey* v. *Holloway*, (1901) 2 K. B. 44).

Medicine.—Words imputing to a medical man that he is a quack or a mountebank (*Goddart* v. *Haselfoot*, 1 Roll. Abr. 54); or that he has killed a patient through ignorance of the first principles of his profession (*Tutty* v. *Alevin*, 11 Mod. 221); or that he is unskilful (*Southy* v. *Denny*, 1 Ex. D. 196); or negligent (*Edsall* v. *Russell*, 12 L. J. C. P. 4); or that he is of bad character (*Southey* v. *Denny*, 17 L. J. Ex. 5; *Ayre* v *Craven*, 2 Ad. & E. 2) are actionable *per se* without proof of any special damage.

Church.—It is actionable to accuse a beneficed clergyman of preaching false doctrine (*Dr. Sibthorpe's case*, 1 Roll. Abr. 76), or to impute to him immorality (*Evans* v. *Gwyn*, L. R. 5 Q. B. 844; *Gallwey* v. *Marshall*, 9 Ex. 294; *Highmore* v. *Harrington*, 3 C. B. N. S. 142), or misappropriation of the sacrament money (*Highmore* v. *Harrington*, *sup.*); but to charge him with fraud (*Pemberton* v. *Colls*, L R. 10 Q. B. 461), or intemperance (*Cucks* v. *Starre*, Cro. Car. 285) is not actionable without proof of special damage, unless such charge affects him in his professionaal character.

Trade.—To say of a tradesman that he uses or sells by false weights (*Stober* v. *Green*, 1 Brown. & Gold. 5), or false measures (*Bray* v. *Ham*, *ib.* 4) or that he adulterates his goods (*Jesson* v. *Hayes*, 1 Roll. Abr. 63; *Ingram* v. *Lawson*, 6 Bing. N. C. 216); or that he is insolvent (*Robinson* v. *Marchant*, 15 L. J. Q. B. 136; *Brown* v. *Smith*, 13 C. B. 599) is actionable; for such words obviously touch him in his trade (*Griffiths* v. *Lewis*, L. R. 8 Q. B. 841). Where an advertisement of a dissolution of partnership was printed among a list of meetings under the Bankruptcy Act, substantial damages were allowed (*Shepheard* v. *Whittaker*, L. R. 10 C. P. 502).

Other professions.—If a clerk to a gas-light company is charged with immoral conduct with women, that imputation having no reference to his office, is not actionable, the words not being said to have been spoken of him in his office as clerk, nor proved to have occasioned him any special damage (*Lumby* v. *Allday*, Ball L. C. 14). But it is actionable to say that he cheats or swindles his employers (*Seaman* v. *Bigg*, Cro. Car. 480; *Reignald's case*, Cro. Car. 563) or that he is unfit for his place (*Rumsey* v. *Webb*, 11 L. J. C. P. 129). Similarly, it is actionable to impute incapacity to an

architect (*Botterill* v. *Whytehead*, 41 L. T. 588), a land agent or surveyor (*London* v. *Eastgate*, 2 Roll. R. 72), journalist, or schoolmaster (*Hume* v. *Marshall*, 42 J. P. 136). It is not actionable to call a stone-mason a ring-leader of the nine hours' system, since this hardly relates to his business (*Miller* v. *David*, L. R. 9 C. P. 118).

Leading case.—**Lumby v. Allday.**

4. **Unchastity.**—Formerly, words imputing unchastity to a woman were not actionable without proof of special damage (*Wilby* v. *Elston*, 18 L. J. C. P. 320). But the Slander of Women Act, 1891, (54 and 55 Vic. c. 51), has abolished the need of showing special damage in the case of words which impute unchastity or adultery to any woman or girl.

2. INDIAN LAW.

The Bombay High Court has decided that in a suit between Hindus in the Bombay mofussil damages may be recovered for mere verbal abuse, without proof of actual damage resulting therefrom to the plaintiff (*Kashiram* v. *Bhadu*, 7 B. H. C. A. C. J. 17).

The Calcutta High Court has, in a Full Bench case, ruled that mere use of abusive and insulting language, apart from defamation, is not actionable irrespective of any special damage (*Girish Chunder* v. *Jatadhari*, 26 Cal. 653 : over-ruling *Kanoo Mundle* v. *Rahamoollah*, (1864) W. R. Gap. No. 269; *Hossein* v. *Bakir Ali*, (1864) W. R. 302; *Gholam Hossein* v. *Hur Gobind*, 1 W. R. 19; *Tukee* v. *Khoshdel*, 6 W. R. 151 ; *Osseemooddeen* v. *Futteh Mahomed*, 7 W. R. 259; *Gour Chunder* v. *Clay*, 8 W. R. 256; *Shreenath Mookerjee* v. *Komul*, 16 W. R. 83; *Kali Kumar* v. *Ramgati*, 16 W. R. 84*n.*; *Srikant Roy* v. *Satcoori*, 3 C. L. R., 181 ; *Ibin Hossein* v. *Haidar*, 12 Cal. 109; *Trailokyanath* v. *Chundra Nath*, 12 Cal. 424; *Dina Ram* v. *Jogeswar*, 2 C. W. N. cxxiii: following *Komul Chunder* v. *Nobin Chunder*,

10 W. R. 184; *Phoolbasee Koer* v. *Parjun Singh*, 12 W. R. 369; *Chunder Nath* v. *Isurree Dossee*, 18 W. R. 531; *Nil Madhub* v. *Dookeeram*, 15 B. L. R. 161). Maclean, C. J., said: "If mere vulgar abuse, uttered in a moment of anger, abuse to which no person of ordinary sense and temper would attach the slightest importance, is, if it cause mental distress, to afford a ground of action, it is lamentable to think to what an alarming extent the flood-gates of litigation would, in this country, become open." Damages are not recoverable for mental distress *alone* caused to the plaintiff by slanderous words conveying insult (*Bhoony Money* v. *Natobar Biswas*, 28 Cal. 452).

The Madras High Court in the leading case of *Parvathi* v. *Mannar* (8 Mad. 175) has decided that the rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. Turner, C. J., said: "Mere hasty expressions spoken in anger or vulgar abuse to which no hearer would attribute any set purpose to injure character would of course not be actionable, but, when a person either maliciously or with such carelessness to enquire into truth as is sometimes described as legal malice, deliberately defames another, we conceive that he ought to be held responsible for damages for the mental suffering his wrong-doing occasions....We consider the action should be allowed where the defamatory matter is such as would cause substantial pain and annoyance to the person defamed, though actual proof of damage estimable in money may not be forthcoming."

In Lower Burma it has been held that although a case may not fall within the classes for which English law permits a civil action without an allegation of special damage, the law of this country does allow a civil action to be

brought and damages to be recovered without proof of special damage, there being no logical or reasonable distinction between a libel or slander written and slander spoken (*Mi Nu* v. *Mi Nwe*, 5 Burma L. R. 32).

Unchastity.—The Calcutta High Court has recently laid down that words imputing unchastity to a woman are not actionable without proof of special damage (*Bhooni Money* v. *Natobar Biswas*, 28 Cal. 452).

Abusive and insulting language such as *sala* (wife's brother), *haramzada* (base born or bastard), *soor* (pig), *baper beta* (son of the father, that is, ironically, bastard) is not actionable irrespective of any special damage (*Girish Chunder* v. *Jatadhari*, *sup.*).

The omission of a mere courtsey cannot be taken to be equivalent to slandering or libelling a man, and is not an actionable wrong (*Sri Raja Sitarama* v. *Sri Raja Sanyasi*, 3 M. H. C. 4). Plaintiff sued certain persons for damages for defamation, for having in the course of a caste inquiry declared him an outcaste for committing adultery, without giving him an opportunity to vindicate his character. Held, that the defendants had not acted *bona fide* in making the declaration, and that the plaintiff was entitled to recover damages (*Vallabha* v. *Madusudanan*, 12 Mad. 495). A railway guard, having reason to suppose that a passenger travelling by a certain train from Madras to Chingleput had purchased his ticket at an intermediate station, called upon the plaintiff and others of the passengers to produce their tickets. As a reason for demanding the production of the the plaintiff's ticket, he said to him in the presence of the other passengers "I suspect you are travelling with a wrong (or false) ticket," which was the defamation complained of. The guard was held to have spoken the above words *bona fide*. Held, that the plaintiff was not entitled to a decree for damages (*South I. Ry.*, v. *Ramakrishna*, 13 Mad. 34).

Repetition of Libel and Slander.

It is no defence to an action for libel or slander that the defendant published it by way of repetition or hearsay. "Tale-bearers are as bad as tale-makers." Every repetition of defamatory words is a new publication and a distinct cause of action. Repetition of a libel published in the first instance by another is sufficient to render the person repeating the libel liable in an action for defamation

(*Kaikhusru* v. *Jehangir*, 14 Bom. 532). A man may wrongfully and maliciously repeat that which another person may have uttered upon a justifiable occasion. As great an injury may accrue from the wrongful repetition as from the first publication of the slander; the first utterer may have been a person insane, or of bad character. The person who repeats it gives greater weight to the slander (per Littledale, J., in *M' Pherson* v. *Daniels*, 10 B. & C. 272).

An action will lie eventhough the statement complained of (*Waithman* v. *Weaver*, 11 Price 257*n*) was a current rumour and the defendant *bona fide* believed it to be true (*Watkin* v. *Hall*, L. R. 3 Q. B. 396). It is no defence that the speaker at the time named the person from whom he heard the scandal (*McPherson* v. *Daniels*, *sup.*) "Because one man does an unlawful act to any person, another is not to be permitted to do a similar act to the same person. Wrong is not to be justified, or even excused, by wrong" (per Best, C. J., in *De Crespigny* v. *Wellesley*, 5 Bing. 404).

If the damage arise simply from the repetition the originator will not be liable (*Parkins* v. *Scott*, 1 H. & C. 153; *Watkin* v. *Hall*, *sup.*); except—

(1). Where the originator had authorized the repetition (*Kendillon* v. *Maltby*, C. & M. 402); or

(2). Where an actual duty is cast upon the person to whom the slander is uttered to communicate what he has heard to some third person. As when a communication is made to a husband, such as, if true, would render the person the subject of it unfit to associate with his wife and daughters, the slanderer cannot excuse himself by saying, "True, I told the husband, but I never intended that he should carry the matter to his wife." In such case the communication is privileged; and the originator of the slander, and not the bearer of it, is responsible for the

consequences (per Cockburn, C. J., in *Derry* v. *Handley*, 16 L. T. N. S. 263).

If A speaks of Z words actionable only with special damage, and B repeats them, and special damage ensue from the repetition only, Z shall have an action against B, but not against A (*Parkins* v. *Scott*, 1 H. & C. 153). Where A slandered B in C's hearing, and C without authority repeated the slander to D, *per quod* D refused to trust B; it was held that no action lay against A, the original utterer, as the damage was the result of C's unauthorized repetition and not of the original statement (*Ward* v. *Weeks*, 4 M. & P. 808).

Indian case.—Defendant was the editor of a newspaper and had reprinted in his paper an article libelling the plaintiff, which was copied from another newspaper. The defendant endeavoured to guard himself against the consequences of this publication by commenting on the article and observing that it was evidently untrue. It, however, appeared that the defendant for years past had been writing of the plaintiff in opprobrious terms and calling him by offensive names. Held, that reading the article as a whole and in its natural sense, and taking it in connection with the previous articles appearing in the defendant's newspaper with reference to the plaintiff, it was in itself defamatory of the plaintiff (*Kaikhusru* v. *Jehangir*, 14 Bom. 532).

Leading case.—**De Crespigny v. Wellesley.**

EXCEPTIONS.

1. JUSTIFICATION BY TRUTH.

The truth of any defamatory words is, if pleaded, a complete defence to any action of libel or slander (*Watkin* v. *Hall*, L. R. 3 Q. B. 400; *Gourley* v. *Plimsoll*, L. R. 8 C. P. 362; *Leyman* v. *Latimer*, 3 Ex. D. 352), though by itself it is not a defence in a criminal trial. If the defendant succeeds in proving the truth of the libel, no action will lie in a civil Court, because the law will not permit a man to recover damages in respect to an injury to character which he either does not, or ought not to, possess (*McPherson* v. *Daniels*, 10 B. & C. 272—*Addison*). It would make no difference in law that the defendant had made a defamatory statement without any belief in its truth, if it turned out

EXCEPTIONS OR DEFENCES TO AN ACTION OF LIBEL OR SLANDER.

EXCEPTIONS.

- Justification on the ground of truth of the defamatory statement.
- Fair and *bona-fide* comment on matters of public interest.
- Privilege
  - Absolute Privilege
    - Parliamentary proceedings.
    - Judicial proceedings
      - Judge, Justice of the Peace, Coroner, Juror.
      - Advocate.
      - Parties.
      - Witnesses.
      - Pleadings and Affidavits.
    - Military and Naval proceedings.
    - State proceedings.
  - Qualified Privilege or Privileged occasions
    - Duty
      - Legal.
      - Social or Moral
        - Character of servants.
        - Confidential communications of a private nature.
          - Answers to confidential inquiries.
          - Confidential communications not in answer to a previous inquiry.
          - Communications made in discharge of a duty arising from a confidential relationship existing between the parties.
          - Information volunteered when there is no confidential relationship existing between the parties.
        - Information for public good...
          - Crime or misconduct of others.
          - Charges against public officials.
    - Self-protection
      - Statements necessary to protect the defendant's private interests.
      - Statements *provoked* by previous words or acts of the plaintiff.
      - Statements *invited* by previous words or acts of the plaintiff.
    - Protection of common interest in respect of
      - Family matters.
      - Money matters.
      - Profession or calling.
      - Any right or duty recognized by law.
    - Fair reports of
      - Judicial proceedings
        - Must be
          - Substantial.
          - *Bona-fide*.
          - Fair or impartial.
          - Correct or accurate.
        - Must not be.
          - Scandalous.
          - Balasphemous.
          - Of Immoral tendency.
          - Prohibited by Court.
      - Parliamentary proceedings.
      - Quasi-judicial proceedings.
      - Proceedings in public meetings.

afterwards to be true when made. If the matter is true the purpose or motive with which it was published is irrelevant. The defendant must show that the imputation made or repeated by him was true as a *whole* and in every material part thereof. But it is not necessary to justify every detail of the charge or general terms of abuse, provided that the gist of the libel is proved to be in *substance* correct, and that the details &c., which are not justified, produce no different effect on the mind of the reader than the actual truth would do (*Willmet* v. *Harmer*, 8 C. & P. 695). "It would be extravagant to say that in cases of libel *every* comment upon facts requires a justification. A comment may introduce independent facts, a justification of which is necessary, or it may be the shadow of the previous imputation" (per Lord Denman, *Cooper* v. *Lawson*, 1 W. W. & H. 601). Thus, it is enough if the statement though not perfectly accurate is *substantially* true (*Alexander* v. *N. Ry.*, 11 Jur. N. S. 619). Again, the defendant cannot justify one part of a statement, and admit liability for another part, without distinctly severing that which he does not (*Fleming* v. *Dollar*, 23 Q. B. D. 388; *Weaver* v. *Lloyd*, 4 D. & R. 230; *Ingram* v. *Lawson*, 1 Arn. 387).

If there is gross exaggeration the plea of justification will fail (*Clarkson* v. *Lawson*, 6 Bing. 266).

The maxim, "the greater the truth, the greater the libel," is no longer applicable to any but criminal cases, in which the truth is only a justification provided that it is also shown that the publication was for the *public good*. The criminal law views the matter from the stand-point of the king's peace, of a breach of which the libel is frequently all the more likely to be provocative in proportion to its truth (*Innes*). According to the Indian Penal Code it is not enough that the words complained of are true, the defendant must then be prepared to go further and prove

that not only are the words true, but that also it is for the *public benefit* that they should be published.

In cases of defamation onus of proving the truth of the statement or at least of showing that he had reasonable ground for believing it to be true, and was actuated in making such statement not by malicious motives, but by an intelligent zeal for the public interest lies on the person making the statement (*Altaf Hossien* v. *Tasudook Hossien*, 2 Agra 87).

Justification.—Where the libel complained of was that "L, B and G are a gang who live by card-sharping;" it was held to be sufficient justification to prove that upon two distinct occasions L, B and G had cheated at cards (*R.* v. *Labouchere*, 14 Cox C. C. 449).

No justification.—Where a newspaper published a paragraph by the title "How Lawyer B treats his Clients" and this contained a report of a case in which one client of lawyer B had been badly treated; it was held that the title was not justified by the facts, and that the plaintiff was entitled to damages (*Bishop* v. *Latimer*, 4 L. T. 775). Where a newspaper had published a correct report of certain proceedings in the Insolvent Debtors' Court preceded by the title "Shameful conduct of an Attorney," the report was held privileged, but damages were recovered for the title (*Clement* v. *Lewis*, 3 B. & B. 297). Where the libel stated that the plaintiff, a proctor, had been *three* times suspended for extortion; it was held to be no justification to prove that he had been *once* so suspended (*Clarkson* v. *Lawson*, 6 Bing. 266). Where the defendant had stated that the plaintiff was a "libellous journalist" it was held that a plea of justification was not supported by proof that the plaintiff had libelled one person who had obtained damages (*Wakeley* v. *Cooke*, 4 Ex. 511). Where the editor of a newspaper was called "a felon editor" as he was once convicted; it was held that this was no justification, inasmuch as a person who has been convicted and suffered his term of imprisonment does not, in law, continue to be a felon (*Leyman* v. *Latimer*, 3 Ex. D. 15, 352).

2. FAIR AND BONA FIDE COMMENT.

Fair and *bona fide* comment on matters of public interest are not libellous, however severe in their terms, unless they are written intemperately and maliciously (*Odgers*). Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he

does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only, but which concern the public, and the discussion of which is for public good. Where a person makes the public conduct of a public man the subject of comment, and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no misapprehension of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care (*Howard* v. *Mull*, per Couch, J., in 1 B. H. C. AP. 91).

Matters of public interest are :—

(1). Affairs of State (*Parmiter* v. *Coupland*, 6 M. & W. 108; *Seymour* v. *Butterworth*, 3 F. & F. 376; *R.* v. *Carden*, 5 Q. B. D. 1).

(2). The administration of Justice (*Daw* v. *Eley*, L. R 7 Eq. 49; *Lewis* v. *Levy*, E. B. & E. 537; *R.* v. *O'Dogherty* 5 Cox C. C. 348; *Woodgate* v. *Ridout*, 4 F. & F. 223; *R.* v *Tanfield*, 42 J. P. 424).

(3). Public institutions and local authorities (*Purcell* v. *Sowler*, 2 C. P. D. 218; *Cox* v. *Feeney*, 4 F. & F. 13).

(4). Ecclesiastical matters (*Kelly* v. *Tinling*, L. R. 1 Q. B. 699).

(5). Books, pictures and works of art (*Strauss* v. *Francis*, 4 F. & F. 1114; *Fraser* v. *Berkeley*, 7 C. & P. 621; *Thompson* v. *Shackell*, M. & M. 187).

(6). Theatres, concerts, and other public entertainments (*Green* v. *Chapman*, 4 Bing. N. C. 92; *Dibden* v. *Swan*, 1 Esp. 27; *Gregory* v. *Brunswick*, C. & K. 24).

(7). Other appeals to the public, *e. g.*, (*a*) a medical man bringing forward some new method of treatment and

advertising it (*Morison* v. *Hurmer*, 3 Bing. N. C. 759; (*b*) a tradesman distributing hand-bills (*Paris* v. *Levy*, 9 C. B. N. S. 342); (*c*) a man appealing to the public by writing letters to a newspaper (*Odger* v. *Mortimer*, 28 L. T. 472; *O'Donoghue* v. *Hussey*, Ir. R. 5 C. L. 124); (*d*) a man coming prominently forward in any way, and acquiring for a time a *quasi*-public position (*Davis* v. *Duncan*, L. R. 9 C. P. 396) (*Odgers*).

Nothing is more important than that fair and full latitude or discussion should be allowed to writers upon any public matter, whether it be the conduct of public men, or the proceedings in Courts of Justice, or in Parliament, or the publication of a scheme, or a literary work (per Crompton, J., in *Campbell* v. *Spottiswoode*, 3 B. & S. 778). The comment must be *bona fide* and must not be made a cloak for malice. There should be no insinuation of base and wicked motives, or of improper and dishonourable conduct, without some foundation in fact; and it is no defence that defendant honestly believed the charges to be true (per Cockburn, C. J., in *ibid.*). The critic is at liberty to comment upon and ridicule the sentiments and opinions of the author, but he is not justified in making calumnious remarks on the private character of the individual (per Lord Ellenborough, in *Stuart* v. *Lovell*, 2 Stark. 97; *Carr* v. *Hood*, 1 Camp. 355).

Where a question of libel is brought in respect of a comment on a matter of public interest the Court has to decide whether the disparaging statements go beyond the limits of fair criticism...It is very easy to say what would be clearly beyond that limit, if, for instance, the writer attacked the private character of the author. But it is much more difficult to say what is within the limit. That must depend upon the circumstances of the particular case. Mere exaggeration, or even gross exaggeration, would not

make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which should be considered is—Would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said? (per Lord Esher, M. R., in *Merivale* v. *Carson*, 20 Q. B. D. 280, which overruled the case of *Henwood* v. *Harrison*, L. R. 7 C. P. 66, and followed *Campbell* v. *Spottiswoode*, 3 B. & S. 769). "It must be assumed that a man is entitled to entertain any opinion he pleases, however wrong, exaggerated, or violent it may be, and it must be left to the jury to say whether the mode of expression exceeds the reasonable limits of fair criticism...The writer would be travelling out of the region of fair criticism...if he imputes to the author that he has written something which in fact he has not written" (per Bowen, L. J. *ibid.*, 283; *Carr* v. *Hood*, 1 Camp. 355, *Tabart* v. *Tipper*, 1 Camp. 351).

It should be considered what impression would be produced in the mind of an unprejudiced reader who reads the article complained of straight through, knowing nothing about the case beforehand. The article must be considered as a whole, too much attention must not be paid to isolated passages. If there are such deviations from absolute accuracy as to make the comment unfair, the plaintiff must win; but, if there are no such deviations, or the deviation is minute and within the latitude of fair discussion, and within the region of that diversity of opinion which may be fairly and reasonably entertained by different persons upon the same subject matter, he must fail (*South Hetton Coal Co.* v. *N. E. News Asso.* (1894) 1 Q. B. 143).

Thus, legitimate criticism is no tort; should loss ensue

to the plaintiff, it would be *damnum sine injuria* (*Merivale* v. *Carson*, 20 Q. B. D. 275). But

(1) the words published must be fairly relevant to some matter of public interest;

(2) they must be the expression of an opinion, and not the allegation of a fact;

(3) they must not exceed the limits of a fair comment; and

(4) they must not be published maliciously. The word "fair" in the phrase "a fair comment" refers to the language employed, and not to the mind of the writer. Hence, it is possible that a fair comment should yet be published maliciously.

A person has a right to comment upon the public acts of a minister, or of an officer of State, or upon the Members of both Houses of Parliament (*Wason* v. *Walter*, L. R. 4 Q. B. 93), or upon the public acts of a General, or upon the public judgments of a Judge (*Davis* v. *Duncan*, L. R. 9 C. P. 396), or upon the conduct of persons at a public election meeting, or upon the sermons of a clergyman, or upon his conduct in respect to his church, or conduct of public worship (*Kelly* v. *Tinling*, L. R. 1 Q. B. 699), or upon the public skill of an actor; but he has no right to impute to them such conduct as disgrace and dishonours them in private life (*Parmiter* v. *Coupland*, 6 M. & W. 108; *Gattercole* v. *Mial*, 15 M. & W. 319). A fair criticism of the past exploits of one who is endeavouring to push a scheme of national importance is not actionable (*Henwood* v. *Harrison*, L. R. 7 C. P. 606).

3. PRIVILEGE.

The meaning of the word 'privilege' when used to indicate protection to a defamatory communication is, that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be slanderous or libellous in any one else (*Folkard*). There are occasions on which it is right that one man should speak about another, and state fully and freely what he honestly believes to be the truth as to his character or means. Such occasions are deemed in law to be *privileged*;

and it is a defence to an action of libel or slander that the words were published on a privileged occasion.

Privileged occasions are of two kinds :—(1) those absolutely privileged; and (2) those in which the privilege is but qualified.

(1). On certain occasions the interests of society require that a man should speak out his mind fully and frankly, without thought or fear of consequences. To such occasions, therefore, the law attaches an **absolute privilege**; and any action is respect of words so published is forbidden, eventhough it be alleged that they were spoken falsely, knowingly, and with express malice. This absolute privilege is confined to cases in which the public service or the administration of justice requires that complete immunity should be afforded, *e. g.*, words spoken in Parliament or in the course of judicial, military, or naval proceedings, &c.

(2). In less important matters the interests of the public do not demand that the speaker should be freed from *all* responsibility, but merely require that he should be protected so far as he is speaking honestly for the common good ; in these cases the privilege is said to be **qualified** only ; and the plaintiff will recover damages in spite of the privilege, if he can prove that the words were not used *bona fide* but that the defendant availed himself of the privileged occasion wilfully and knowingly to defame the plaintiff (*Odgers*). Thus, **qualified privilege** is a privilege rebuttable by proof of express malice or malice in fact.

The distinctions between **absolute** and **qualified privileges** are.—

(1). In the case of *absolute privilege*, it is the occasion which is privileged, and when once the nature of the occasion is shown, it follows, as a necessary inference, that every communication on that occasion is protected. But

in the case of *qualified privilege* the defendant does not prove privilege until he has shown how that occasion was used. A communication on a privileged occasion, therefore, is not necessarily a privileged communication, though the terms are frequently used as convertible. It is not enough to have an interest or duty in making a communication, the interest or duty must be shown to exist in making *the* communication complained of (per Dowse, B., in *Lynam* v. *Gowing*, L. R. 6 Ir. 269). In respect of qualified privilege, it is only protected where the occasion is lawful, and is limited by the necessities of the case (*Keshavlal* v. *Girja*, 1 Bom. L. R. 484; 24 Bom. 13).

(2). Even after a case of *qualified privilege* has been established, it may be met by the plaintiff proving in reply actual malice on the part of the defendant, for he thus shows that the plea is only colourable, and that under the pretence of doing his duty or protecting his lawful interest the defendant has been pursuing some by-end or gratifying his ill-will (*C. & L.*, 502). It is for the plaintiff to prove that the defendant acted in bad faith, not for the defendant to prove that he acted in good faith (*Clark* v. *Molyneux*, 3 Q. B. D. 237; *Jenoure* v. *Delmege*, (1891) A. C. 73). The cases of absolute privilege are protected in all circumstances, independently of the presence of good or bad faith (*Keshavlal* v. *Girja*, *sup.* 483).

I. *Absolute privilege.*

Occasions absolutely privileged may be grouped under four heads:—(1) Parliamentary proceedings; (2) Judicial proceedings; (3) Military and Naval proceedings; (4) State proceedings.

1. PARLIAMENTARY PROCEEDINGS.

Speeches in Parliament are absolutely and irrebuttably privileged (*Stockdale* v. *Hansard*, 9 A. & E. 1; *Dillon* v.

Balfour, 20 Ir. L. R. 601). A member is not in any way responsible for anything said in the House, but this privilege does not extend to anything said outside the walls of the House, or to a speech printed and privately circulated outside the House (*R.* v. *Abingdon*, 1 Esp. 226). For such a speech only a *qualified privilege* can be claimed (*Davison* v. *Duncan*, 7 E. & B. 233). A petition to Parliament is absolutely privileged, although it contains certain false and defamatory statements (*Lake* v. *King*, 1 Saund. 181); so is a petition to a committee of either House (*Kane* v. *Mulvany*, Ir. R. 2 C. L. 402). But a publication of such a petition to others not members of the House is not privileged. Statements of witnesses before Parliamentary select committees of either House are also privileged (*Goffin* v. *Donnelly*, 6 Q. B. D. 307). No indictment will lie for an alleged conspiracy by members of either House to make speeches defamatory of the plaintiff (*Ex parte Wason*, L. R. 4 Q. B. 573).

At Common law, even if the whole House ordered the publication of Parliamentary reports and papers, no privilege attached (*R.* v. *Williams*, 2 Shower 47; *Stockdale* v. *Hansard*, 2 M. & R. 9). But now by a Statute all reports, papers, votes and proceedings ordered to be published by either House of Parliament are made absolutely privileged (3 & 4 Vic. c. 9).

2. JUDICIAL PROCEEDINGS.

No action will lie for defamatory statements made or sworn in the course of a judicial proceeding before any Court of competent jurisdiction. Every thing that a Judge says on the bench, or a witness in the box, or a counsel in arguing, is absolutely privileged, so long as it is in any away connected with the inquiry. So are all documents necessary to the conduct of the case, such as pleadings,

affidavits, and instructions to counsel. This immunity rests on obvious grounds of public policy and convenience (*Odgers*).

Judge.—A Judge of a superior Court, *i. e.*, of the House of Lords, the Judicial Committee of the Privy Council, the Court of Appeal, the High Court of Justice, and Courts of Nisiprius and Assize, has an absolute immunity, and no action can be maintained against him, eventhough it be alleged that he spoke maliciously, knowing his words to be false, and also that his words were irrelevant to the matter in issue before him, and wholly unwarranted by evidence. It is essential to the highest interests of public policy to secure the free and fearless discharge of high judicial functions (*Floyd* v. *Barker*, 12 R. 24: *Taaffe* v. *Downes*, 3 M. P. C. 36; *Fray* v. *Blackburn*, 3 B. & S. 576). No action lies eventhough such Judge has acted oppresively and maliciously, to the prejudice of the plaintiff and to the perversion of justice (*Anderson* v. *Gorrie*, (1895) 1 Q. B. 668).

A Judge of an inferior Court of record enjoys the same immunity in this respect as the Judge of a Superior Court, so long as he has *jurisdiction* over the matter before him (*Scott* v. *Stansfield*, L. R. 3 Ex. 220). For any act done in any proceeding in which he either knows, or ought to know, that he is *without jurisdiction*, he is liable as an ordinary subject (*Houlden* v. *Smith*, 14 Q. B. D. 841; *Calder* v. *Halket*, 3 M. P. C. 28). And so he would be liable for words spoken after the business of the Court is over (*Paris* v. *Levy*, 9 C. B. N. S. 342).

Indian law.—An action for defamation cannot be maintained against a Judge for words used by him whilst trying a cause in Court eventhough such words are alleged to be false, malicious and without reasonable cause (*Raman Nayar* v. *Subramanya*, 17 Mad. 87).

Justice of the Peace.—A Justice of the Peace enjoys an equal immunity. No action will lie against him unless the defamatory words are wholly unconnected with the matter in issue and are spoken maliciously and without reasonable or probable cause (*Kirby* v. *Simpson*, 10 Ex. D. 358; *Gelen* v. *Hall*, 2 H. & N. 379). But if the conduct of the plaintiff be a matter in any way relevant to the enquiry, and the proceedings are within the *jurisdiction* of the Magistrate, he may express his opinion of such conduct with the utmost freedom and no action will lie (*Munster* v. *Lamb*, 11 Q. B. D. 588).

Coroner.—No action lies against a coroner for anything he says in his address to the jury impanelled before him, however defamatory, false, or malicious it may be; unless the plaintiff can prove that the statement was wholly *irrelevant* to the inquisition and not warranted by the occasion; the corner's Court being "a Court of record of very high authority" (*Thomas* v. *Churton*, 2 B. & S. 475; *Yates* v. *Lansing*, 5 Johns. 283).

Juror.—Every observation of a juror is absolutely privileged if connected with the matter in issue (*R.* v. *Skinner*, Lofft. 55); so is any presentment by a Grand Jury (*Little* v. *Pomeroy*, Ir. R. 7 C. L. 50).

Advocate.—The freedom of speech at the Bar is the privilege of the client, vested in the counsel, who represents him. No action will lie against an advocate for defamatory words spoken with reference to, and in the course of, any inquiry before a judicial tribunal, although they are uttered by the advocate maliciously, and not with the object of supporting the case of his client, and are uttered without any justification, or even excuse, and from personal ill-will or anger towards the person defamed, arising out of a previously existing cause, and are irrelevant to every issue of fact which is contested before the tribunal (*Munster* v.

Lamb, 11 Q. B. D. 588). Brett, M. R., said: "A counsel's position is one of the utmost difficulty. He is not to speak of that which he knows; he is not called upon to consider whether the facts with which he is dealing are true or false. What he has to do is to argue as best he can without degrading himself in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If amidst the difficulties of his position he were to be called upon during the heat of an argument to consider whether what he says is true or false, whether what he says is relevant or irrevelant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform...To my mind it is illogical to argue that the protection of privilege ought not to exist for a counsel, who deliberately and maliciously slanders another person. The reason of the rule is that a counsel who is not malicious and who is acting *bona fide* may not be in danger of having actions brought against him. If the rule of the law were otherwise, the most innocent of counsel might be unrighteously harrassed with suits, and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large, counsels are included who have been guilty of malice and misconduct" (*Ib.*, 588). His words are absolutely privileged, although he may have exceeded his instructions (*Needham* v. *Dowling*, 15 L. J. C. P. 9; *Armstrong* v. *Kierman*, 5 Ir. C. L. R. 171; *Taylor* v. *Swinton*, 2 Shaw's Sc. Ap. Ca. 245).

Indian law.—An advocate in this country cannot be proceeded against either civilly or criminally for words uttered in his office as advocate (*Sullivan* v. *Norton*, 10 Mad. 28, F. B.). An advocate has the fullest liberty of speech in the course of a trial before a judicial tribunal so long as his language is justified by his instructions, or by the evi-

dence, or by the proceedings on the record. The mere fact that his words are defamatory, or that they are calculated to hurt the feelings of another, or that they ultimately turn out to be absolutely devoid of all solid foundation, would not make him responsible nor render him liable in any civil or criminal proceeding (*Bhaishankar* v. *Wadia*, 2 Bom. L. R. 3, F. B.).

Solicitors acting as advocates have a like privilege (*Mackay* v. *Ford*, 5 H. & N. 792).

Party.—Defamatory statements by a party in open Court conducting his own cause are also absolutely privileged; and no action will lie, no matter how false or malicious or irrelevant to the matter in issue the words complained of may have been (*Royal Aquirium &c.* v. *Parkinson*, (1892) 1 Q. B. 451). "The party himself, from his comparative ignorance of what is and what is not relevant, may be indulged in a greater latitude and not be restricted within the same limits as a counsel whose superior knowledge must be sufficient to restrain him within due bounds" (per Holroyd, J., in *Hodgson* v. *Scarlett*, 1 B. & Ald. 244).

Witness.—A witness in the box is absolutely privileged in answering all the questions asked him by the counsel on either side; and even if he volunteers an observation still if it has *reference to the matter in issue*, or fairly arises out of any question asked him by counsel, though only going to his credit, such observation will also be privileged (*Seaman* v. *Netherclift*, 1 C. P. D. 540). But a remark made by a witness in the box, wholly *irrelevant* to the matter of inquiry, uncalled for by any question of counsel, and introduced by the witness maliciously for his own purposes, would not be privileged. So, of course an observation made by a witness while waiting about the Court, and before entering or after leaving the box, is not

privileged (*Trotman* v. *Dunn*, 4 Camp. 211; *Lynam* v. *Gowing*, 6 L. R. Ir. 259).

Indian law.—The Privy Council has decided that witnesses cannot be sued in a civil Court for damages, in respect of evidence given by them upon oath in a judicial proceeding. The ground of this principle is this, "that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by suits for damages; but that the only penalty which they should incur if they give evidence falsely should be an indictment for perjury" (*Baboo Gunnesh Dutt Singh* v. *Magneeram*, 11 B. L. R. 321; 5 W. R. 134; *Chidambara* v. *Thirumani*, 10 Mad. 87; *Nathji* v. *Lalbhai*, 14 Bom. 97). Similarly, the Bombay High Court has held that no action lies against a witness in respect of words spoken by him in the witness-box although they are false (*Templeton* v. *Laurie*, 2 Bom. L. R. 244; 25 Bom. 230). The Calcutta and Allahabad High Courts and the Chief Court of Punjab further lay down that statements made by witnesses are protected only if they are relevant to the inquiry (*Bhikumber Singh* v. *Becharam*, 15 Cal. 264; *Dawan Singh* v. *Mahip Singh*, 10 All. 425; *Tulshi Ram* v. *Harbans*, 5 A. W. N. 301; *Mohun Lall* v. *Levinge*, P. R. 39 of 1868; *Ali Khan* v. *Malik Yaran Khan*, P. R. 16 of 1879; *Kundan* v. *Ramji Das*, P. R. 146 of 1879). No action lies also against a person for what he states in answer to questions put to him by a Police Officer conducting an investigation under the provisions of the Criminal Procedure Code (*Methuram* v. *Jaggannath*, 28 Cal. 794).

Affidavits, Pleadings, &c.—Every affidavit sworn in the course of a judicial proceeding before a Court of *competent* jurisdiction is absolutely privileged, and no action lies therefor, however false and malicious may be the state-

ments made therein (*Revis* v. *Smith*, 18 C. B. 126). The only exception is where an affidavit is sworn recklessly and maliciously before a Court that has *no* jurisdiction in the matter, and no power to entertain the proceeding (*Buckley* v. *Wood*, 4 R. 14; *R.* v. *Salisbury*, 1 Ld. Raym. 341—*Odgers*). The plaintiff's remedy is to indict the deponent for perjury. The Court will, however, sometimes order scandalous matter in such an affidavit to be expunged (*Christie* v. *Christie*, L. R. 8 Ch. 499).

No action for libel lies for any statement in the pleadings (*Seaman* v. *Netherclift*, L. R. 1 C. P. 545; see *MacCabe* v. *Joynt*, (1901) 2 I. R. 115).

Indian law.—The Bombay High Court has decided that no action for libel lies for any statement in pleadings (*Nathji* v. *Lalbhai*, 14 Bom. 97).

The Calcutta High Court has laid down that a defamatory statement made in the pleadings in an action is not absolutely privileged (*Angada Ram* v. *Nemai Chand*, 23 Cal. 867).

The Madras High Court (though it has never decided the question judicially) has said in *Hinde* v. *Baudry* (2 Mad. 13): "If they (defendants) were rightfully making an application in the suit, the principle of public policy which guards the statement of a party or witness against an action would prevent them whether the statement was malicious or not."

The Allahabad High Court has held that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding. The law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code and not the English law of libel and slander (*Abdul Hakim* v. *Tej Chandar*, 3 All. 815; *Chowdhry Goordutt* v. *Gopal Dass*, 1 Agra 33). If they are not relevant to the suit they can-

not be held to be privileged (*Gobindhi* v. *Jodha*, 5 A. W. N. 204).

The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one M, in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit. Held, that the defendants were privileged against a civil action for damages for what they might have said of the plaintiff in an application they had presented in that suit(*Nathji* v. *Lalbhai*, *sup.*). Where the defendant made defamatory statements about the plaintiff, a Munsiff, in a petition which he presented to the District Judge to transfer his case from the Court of the plaintiff, it was held that the communication was not privileged (*Shibnath* v. *Satkauri*, 3 W. R. 198). Where defendant presented a petition to a Magistrate by way of defence to a charge of criminal trespass brought against him by plaintiff and containing statements to the effect that the plaintiff had caused the criminal proceedings to be instituted against him in order to extort money, it was held that defamatory statements were not privileged merely because they were used in a petition preferred in a judicial proceeding (*Abdul Hakim* v. *Tej Chandar*, *sup.*).

3. MILITARY AND NAVAL PROCEEDINGS.

Proceedings of naval and military officers are absolutely privileged. All acts done in the honest exercise of military authority are privileged. Any untrue or malicious defamatory statement made before a naval or military Court martial is protected (*Dawkins* v. *Lord Rokeby*, L. R. 7 H. L. 744). Reports made in the course of military or naval duty are also absolutely privileged; and no action lies in respect of untrue and malicious statements written in such reports (*Dawkins* v. *Lord Paulet*, L. R. 5 Q. B. 94). A military man giving evidence before a Military Court of Inquiry, which has not the power to administer an oath, is entitled to the same protection as that enjoyed by a witness under examination in a Court of Justice (*Dawkins* v. *Lord Rokeby*, *sup.*).

4. STATE PROCEEDINGS.

For reasons of public policy absolute protection would be given to every communication relating to State matters made by one minister to another, or to the Crown (*Chatterton* v. *Secretary of State for India*, (1895) 2 Q. B. 191, 194). All communications between ministers of State, with regard to public matters or public functions, all expressions of opinion in the conduct of public duties by the officers of State, and all records and documents in which the opinions, or orders of public officers relating to other public officers are contained, are absolutely privileged, and cannot be compelled to be produced in a Court of law. If *prima facie* a document purports to be an official communication which would be privileged, no allegation of malice would be allowed and no proof of malice would take away the privilege (*Jehangir Manekji* v. *Secretary of State*, 5 Bom. L. R. 30).

A communication made by Secretary of State for India in Council to the Parliamentary Under-Secretary to enable the latter to answer a question asked in the House of Commons with regard to the treatment of an officer in the army, by the Indian military authorities, is absolutely privileged, being made by an officer of State to his subordinate in the course of his official duty. Held, that an action for defamation founded on such a statement could not possibly be maintainable, and should, therefore, be dismissed as vexatious (*Chatterton* v. *Secretary of State*, *sup.*).

II. *Qualified privilege.*

The proper meaning of a privileged communication is only this: that the occasion on which the communication was made rebuts the inference *prima facie* arising from a statement prejudicial to the character of the plaintiff, and puts it upon him to prove that there was malice in fact—that the defendant was actuated by motives of personal spite or ill-will, independent of the occasion on which the

communication was made (per Park, B., in *Wright* v. *Woodgate*, 2 C. M. & R. 577; per Lindley, J., in *Stuart* v. *Bell*, (1891) 2 Q. B. 345).

The plaintiff must prove 'malice in fact' which is not confined to personal spite and ill-will, but includes every unjustifiable intention to inflict injury on the person defamed, or every wrong feeling in a man's mind (*Stuart* v. *Bell*, (1891) 2 Q. B. 351). He must show that the defendant was acting from some other motive than a sense of duty (*Clarke* v. *Molyneux*, 3 Q. B. D. 237; *Jenoure* v. *Delmege*, (1891) A. C. 73).

Thus, "the occasion must be made use of *bona fide* and without malice. The defendant is only entitled to the protection of the privilege if he uses the occasion in accordance with the purpose for which the occasion arose. He is not entitled to the protection of the privilege if he uses the occasion for some indirect or wrong motives. This casts upon the plaintiff the burden of proving express malice or malice in fact. If it be proved that out of anger or for some other wrong motive the defendant has stated as true that which he does not know to be true, and he has stated it not stopping or taking the trouble to ascertain whether it is true or not—stated it recklessly by reason of his anger or other indirect motive—the jury may infer that he used the occasion not for the reason that justifies it, but for the gratification of his anger or other indirect motive" (per Lopes, L. J., in *Royal Acquarium &c.* v. *Parkinson*, (1892) 1 Q. B. 454). Malice may be proved by showing that the defendant knew the words were untrue when he wrote or spoke them (*Gerard* v. *Dickenson*, 4 Rep. 18; *Smith* v. *Hodgeskins*, Cro. Car. 276), or that they were uttered with the intention of injuring the plaintiff (*Peacock* v. *Reynal*, 2 B. & G. 151), or that the plaintiff and defendant were rivals or had previously quarrelled (*Hooper* v.

Truscott, 2 Bing. N. C. 457), or that the defendant was actuated by personal resentment (*Gilpin* v. *Fowler*, 9 Ex. 615; *Dickson* v. *Earl of Wilton*, 1 F. & F. 419), or any other wrong motive (*Rogers* v. *Clifton*, 3 B. & P. 587; *Jackson* v. *Hopperton*, 16 C. B. N. S. 829). It may be proved by the unnecessarily extensive publication of the words (*Gilpin* v. *Fowler*, 9 Ex. 615) or by the violent language used (*Spill* v. *Maule*, L. R. 4 Ex. 235; see *Nevill* v. *Fine Arts and Gen. Ins. Co.*, (1895) 2 Q. B. 170).

The following are the cases of *qualified privilege* in which proof of malice enables the plaintiff to succeed :—

1. When circumstances are such as to cast on the defendant the duty of making the communication to a third party (per Lopes, L. J., in *Pullman* v. *Hill*, (1891) 1 Q. B. 530; *Dawkins* v. *Lord Paulet*, L. R. 5 Q. B. 94).

2. Communications made in self-defence.

3. When the defendant has an interest in making the communication to the third person, and the third person has a corresponding interest in receiving it (per Lopes, L. J., in *Pullman* v. *Hill*, *sup.*, 630; *Hunt* v. *G. N. Ry.*, (1891) 2 Q. B. 191).

4. Communications made to persons in public position for public good.

5. Fair and impartial reports of proceedings—
   (*a*) in Parliament; or
   (*b*) in any Court of justice; or
   (*c*) in any public meeting, or meeting of certain public bodies, and persons specified in s. 4 of the Law of Libel Amendment Act, 1888.

1. DUTY.

A communication, injurious to the character of another, made *bona fide* from a sense of duty, legal, moral, or social, and reasonably necessary for the due discharge of such

duty, and made with a belief in its truth is privileged, but such privilege will be rebutted if plaintiff prove that defendant made such statement maliciously (*Dawkins* v. *Lord Paulet*, L. R. 5 Q. B. 102 ; *Jenoure* v. *Delmege*, (1891) A. C. 73 ; *Stuart* v. *Bell*, (1891) 2 Q. B. 341 ; *Bray* v. *Ford*, (1896) A. C. 44, 46). But a libel is not privileged because the person making the same honestly and reasonably believed that the person to whom it was made had an interest or duty in the matter, if as a fact that person has not such interest or duty (*Hebditch* v. *MacIlwaine*, (1894) 2 Q. B. 54).

1. *Legal duty.*

One public officer may address to another a statement of facts pertinent to a matter which it is his duty to investigate, and which he believes to be true. But if he introduces irrelevant calumny and strictures upon the motives and conduct of others which the facts stated do not warrant, he will exceed his privilege (*Cooke* v. *Wilde*, 5 E. & B. 328). Statements made by one official regarding the conduct of another official to the superior authority are privileged if made honestly in belief of their truth, and it is for the plaintiff to prove that they were not so made (*Hart* v. *Gampech*, L. R. 4 P. C. 458—*Collett*).

Assuming that making a defamatory statement in a letter written in reply to a communication from an official superior and admitting in the letter that a similar statement has been made to another person amounts to a publication, still such a letter is confidential and is privileged (*Thomas* v. *Simmonds*, 4 Burma L. R. 152).

2. *Social or Moral duty.*

Communications made in pursuance of a duty owed to society relate to

(1). Character of servants.

(2). Other confidential communications of a private nature.

(3). Information as to crime or misconduct of others: Charges against Public officials.

(1). *Character of servants.*

The instance that occurs frequently of this class is where the defendant is asked as to the character of his former servant, by one to whom he or she has applied for a situation. A duty is thereby cast upon the former master to state fully and honestly all that he knows either for or against the servant; and any communication, made in the performance of this duty, is clearly privileged for the sake of the common convenience of society, even though it should turn out that the former master was mistaken in some of his statements (*Toogood* v. *Spyring*, 1 C. M. & R. 193). But if the master, knowing that the servant deserves a good character, yet, having some grudge against him, or from some other malicious motive, deliberately states what he knows to be false, and gives his late servant a bad character, then such a communication is not a performance of the duty, and therefore is not privileged. There is, in fact, in such a case, evidence of malice which "takes the case out of the privilege."

No one is bound to give a character to his servant when asked for it (*Carrol* v. *Bird*, 3 Esp. 201); and if any character is given, it must be one fully warranted by the facts, and not prompted by unworthy motives.

If, after a favourable character has been given, facts come to the knowledge of the former master which lead him to alter his opinion, it is his duty to inform the person to whom he gave the character of his altered opinion (*Gardner* v. *Slade*, L. R. 13 Q. B. 796; *Child* v. *Affleck*, 4 M. & R. 338, *Fowles* v. *Bowen*, 30 N. Y. R. 20—*Odgers*).

When a master thinks another is going to engage his servant whom he believes to be an improper person, he

may take steps to communicate the facts. But when he *volunteers* to give the character, stronger evidence of good faith and absence of malice will be required than where he gave it upon inquiry (*Pattison* v. *Jones*, 8 B. & C. 578).

Where A took a servant with a good character given to her by B, and was sorely disappointed in her, A was held entitled to write and inform B that she did not deserve the character he gave her, so that B might refrain from recommending her to others; and such a letter was privileged (*Dixon* v. *Parson* 1 F. &. F. 24). Where A had dismissed B and given him a bad character; and then C, B's brother-in-law repeatedly asked A what he had said, and A wrote his reasons to C, and then B sued the latter, it was held to be privileged as having been invited (*Weatherston* v. *Hawkins*, 1 T. R. 110). Where the plaintiff proved that he had been in the service of the defendant, and had been dismissed on a charge of theft, and that he afterwards came to the defendant's house, and had some communication with the defendant's servants when the defendant said to them "I have dismissed that man for robbing me, do not speak to him any more in public or in private, or I shall think you as bad as him;" it was held, that the statement being honestly made by a master as a warning to his servants was a privileged communication, and that it was incumbent on the plaintiff to give some evidence of malice (*Somerville* v. *Hawkins*, 10 C. B. 590).

(2). *Confidential communications of a private nature.*

These are—

(*a*) Answers to confidential inquiries.

(*b*) Confidential communications not in answer to a previous inquiry.

(*c*) Communications made in discharge of a duty arising from a confidential relationship existing between the parties.

(*d*) Information volunteered when there is no confidential relationship existing between the parties.

(*a*) Answers to confidential inquiries.—If a person who is thinking of dealing with another in any matter of business asks a question about his character from some one who has means of knowledge, it is for the interests of society that the question should be answered; and if

answered *bona fide* and without malice, the answer is a privileged communication (per Brett, L. J., in *Waller* v. *Loch*, 7 Q. B. D. 622). Every one owes it as a duty to his fellowmen to state what he knows about a person when inquiry is made, and every thing pertinent to the subject of the inquiry which subsequently passes between the parties is also privileged (*Beatson* v. *Skene*, 29 L. J. Ex. 430).

(*b*) **Confidential communications not in answer to a previous inquiry.**—"It is not necessary in all cases that the information should be given in answer to an inquiry" (per Jessel, M. R., in *Waller* v. *Loch*, 7 Q. B. D. 621). Many occasions are privileged in which no application is made to the defendant, but he himself takes the initiative; while, on the other hand, many answers to inquiries will not necessarily be privileged, even if given confidentially. The question in every case is this—Were the circumstances such that an honest man might reasonably suppose it his duty to act as the defendant has done in this case? And the circumstances may be such that it is clearly the duty of a good citizen to go at once to the person most concerned and tell him everything, without waiting for him to come and inquire (*Odgers*).

(*c*) **Communications made in case of confidential relationship.**—This can be done in cases where there exists between the parties such a confidential relation as to throw on the defendant the duty of protecting the interests of the person concerned. Such a confidential relationship exists between husband and wife, father and son, brother and sister, guardian and ward, master and servant, principal and agent, solicitor and client, partners, or even intimate friends; in short, wherever any trust or confidence is reposed by the one in the other (*Odgers*). Merely labelling a letter "*Private and confidential*," or merely stating, "*I speak in confidence*," will not make a communication confi-

dential in the legal sense of that term, if there be in fact no relationship between the parties which the law deems confidential (*Picton* v. *Jackman*, 4 C. & P. 25).

(*d*) **Volunteered information.**—Where a person is so situated that it becomes right in the interests of society that he should tell to a third person certain facts, then if he *bona fide* and without malice does tell them it is a privileged communication (per Blackburn, J., in *Davies* v. *Snead*, L. R. 5 Q. B. 611).

It appears to be clear that if the defendant reasonably supposed that human life would be seriously imperilled by his remaining silent he may volunteer information to those thus endangered, or to their master, though he be not himself personally concerned. So, if the money or goods of the person to whom he speaks would be in great and obvious danger of being stolen or destroyed. So, too, it appears, the defendant may, without being applied to for the information, acquaint a master with the misconduct of his servants, if instances have come under the especial notice of the defendant which have been concealed from the master's eye. But in most other cases the defendant runs a great risk in volunteering statements which afterwards turn out to be inaccurate, unless indeed he is himself personally interested in the matter, or compelled to interfere by the fiduciary relationship in which he stands to some person concerned. Defendant must sincerely believe in the truth of the statement, and circumstances should be present to his mind which reasonably impose on him a duty to make such statement (*Odgers*).

The fact that there were other persons present than those to whom the defendant was under a duty to make the statement in question will not necessarily destroy the privilege. If their presence was accidental or could not be prevented by the defendant, the privilege will not be lost. Thus, it was held that the privilege which would have attached to defamatory statements made at a meeting of a board of guardians of which the defendant

was a member, was not destroyed by the presence of reporters (*Pittard* v. *Oliver*, (1891) 1 Q. B. 498).

Communications under the following circumstances were held privileged. Communications made to a father respecting his child (*Whiteley* v. *Adams*, 13 L. J. C. P. 95); to a master as to his servant (*Masters* v. *Burgess*, 3 T. L. R. 96); by one friend to another as to a doctor (*Dixon* v. *Smith*, 29 L. J. Ex. 215), or a tradesman (*Storey* v. *Challands*, 8 C. & P. 234); by a servant to his master (*Scarl* v. *Dixon*, 4 F. & F. 250; *Mead* v. *Hughes*, 7 T. L. R. 291); by an under-master to the head-master (*Hume* v. *Marshall*, 42 J. P. 136); by an official in the army or navy or any government office to his superior (*Stace* v. *Griffith*, L. R. 2 P. C. 420); by a master concerning his servant or a child entrusted to his charge, to the parent or guardian of such servant or child (*Fowler* v. *Homer*, 3 Camp. 294; *Aberdein* v. *Macleay* 9 T. L. R. 539); character of a candidate for an office given to one of his canvassers (*Cowles* v. *Potts*, 34 L. J. Q. B. 247); by a solicitor to his client (*Wright* v. *Woodgate*, 2 Cr. M. & R. 573) eventhough he is not at the time engaged in the conduct of any legal proceedings on his behalf (*Davis* v. *Reeve*, 5 Ir. C. L. 79); by the secretary of a charity organization society to a stranger as to the deserts of an applicant to such stranger for charity (*Waller* v. *Loch*, 7 Q. B. D. 619); by a solicitor to his clerk in the discharge of his duty to his client, and in the interests of his client (*Borsius* v. *Goblet*, (1894) 1 Q. B. 846; *Baker* v. *Carrick*, (1894) 1 Q. B. 838).

The publication of the minutes of Medical Council, containing a report of their proceedings, comprising a statement that the name of a specified medical practitioner has been removed from the register on the ground that, in the opinion of the Council, he has been guilty of infamous conduct in a professional respect, is, if the report be accurate and published *bona fide* and without malice, privileged (*Allbutt* v. *Medical Council*, 23 Q. B. D. 400). A, the tenant of a farm, required some repairs to be done at the farm house, and B, the agent of the landlord, directed C to do the work. C did it but in a negligent manner, and during the progress of it got drunk, and some circumstances occurred which induced A to believe that C had broken open his cellar door and obtained access to his cider. A, two days afterwards, met C, in the presence of D, and charged him with having broken open his cellar door, and with having got drunk and spoiled the work. A afterwards told D in the absence of C that he was confident C had broken open the door. On the same day A complained to B that C had been negligent in his work, had got drunk, and he thought he had broken open his cellar-door. Held, that the complaint to B was a privileged communication, if made *bona fide*; and without any malicious intention to injure C. Held, also, that the statement made to C in the presence of D, was also privileged, if made honestly and *bona fide*; and that the circumstance of its being made in the

presence of a third person did not of itself make it unauthorized, and that it was a question to be left to the jury to determine from the circumstances, including the style and character of the language used, whether A acted *bona fide*, or was influenced by malicious motives. Held, also, that the statement to D in the absence of C was unauthorized and officious, and therefore, not protected, although made in the belief of its truth, if it were in point of fact false (*Toogood* v. *Spyring*, 1 Cr. M. & R. 181).

Indian cases.—Plaintiff was a brewer employed by a brewery company, and the defendant was a local manager of the company. The defamatory statements complained of were contained in letters written by the defendant to the directors of the company, and also in a letter written to another brewer in the employ of the company in which he said that the plaintiff "had failed most utterly, and I have been compelled to inform him that you will take the position of senior brewer at the brewery." Held, that those statements were in the nature of privileged communications (*Leishman* v. *Holland*, 14 Mad. 51; see *Mills* v. *Mitchell*, Bourke o. c. 18). Where the Consul of a foreign state wrote some defamatory letters to his Government, reflecting on the character of a commercial house in Calcutta, it was held that such communications were not privileged (*Robert* v. *Lombard*. 1 Ind. Jur. N. S. 192). Plaintiff was a Hindu widow, and defendant was the headman of her caste. Defendant received anonymous letters imputing bad conduct to the plaintiff. He was requested to call a caste meeting to consider the matter; and he did so. It was decided at this meeting to warn the plaintiff to improve her conduct. The warning was unheeded, and a second meeting was called. Ten persons were selected at this meeting to decide what should be done. Defendant was one of the ten, and he communicated to the general meeting the decision they had come to—namely, that the plaintiff should be excommunicated. The defendant, thereupon, asked the priest of the caste to promulgate this decision to all the members of the caste. The plaintiff sued the defendant for defamation. Held, that the defendant was not guilty in doing any of the above acts, as he merely discharged the duty which devolved upon him as the head of the caste (*Keshavlal* v. *Bai Girja*, 1 Bom. L. R. 478; 24 Bom. 13).

(3). *Information for the Public Good.*

(*a*). **Information as to a crime or misconduct of others.** It is a duty every one owes to society and to the State to assist in the discovery of any crime, dishonesty or misconduct, and to afford all information which will lead to the detection of the culprit. When it comes to the knowledge of any one that a crime has been committed, a duty

is laid on that person, as a citizen of the country, to state to the authorities what he knows respecting the commission of the crime; and if he states only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is, after all, not guilty of the crime (per Inglis, J., in *Lightbody* v. *Gordon*, 9 Sc. S. C. 937). For the sake of public justice, charges and communications which would otherwise be slanderous, are protected if *bona fide* made in the prosecution of an inquiry into a suspected crime (per Coleridge, J., in *Padmore* v. *Lawrence*, 11 A. & E. 382); although they may possibly affect the character of a third person (per Parke, B., in *Kine* v. *Sewell*, 3 M. & W. 302). But the answer must be pertinent to the inquiry; and, in fact, the reply must be an answer to the question, or reasonably induced thereby, and not irrelevant information gratuitously volunteered (*Soultere* v. *Allen*, Sir T. Raym. 231; *Huntley* v. *Ward*, 6 C. B. N. S. 514).

(*b*). **Charges against public officials**—It is the duty of all who witness any misconduct on the part of any public officer to bring such misconduct to the notice of those whose duty it is to inquire into and punish it; and, therefore, all petitions and memorials complaining of such misconduct, if prepared *bona fide* and forwarded to the proper authorities, are privileged. And it is not necessary that the informant or memorialist should be in any way personally aggrieved or injured: for all persons have an interest in the pure administration of justice and the efficiency of our public offices in all departments of the State (*Odgers*). Every communication is privileged which is made *bona fide* with a view to obtain redress for some injury received, or to prevent or punish some public abuse..... This privilege, however, must not be abused; for if such

a communication be made maliciously and without probable cause, the pretence under which it is made, instead of furnishing a defence, will aggravate the case of the defendant" (per Best, J., in *Fairman* v. *Ives*, 5 B. & Ald. 647).

II. COMMUNICATIONS MADE IN SELF-PROTECTION.

1. *Statements necessary to protect defendant's private interests.*

Any communication made by the defendant is privileged which a due regard to his own interest renders necessary. He is entitled to protect himself. But in such cases it must clearly appear not merely that some such communication was necessary, but that he was compelled to employ the very words complained of. If he could have done all that his duty or interest demanded without defaming the plaintiff, the words are not privileged (*Odgers*). "Any one in the transaction of business with another, has a right to use language *bona fide*, which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly or by its consequences, be injurious or painful to another; and this is the principle on which privileged communication rests; but defamatory comments on the motives or conduct of the party with whom he is dealing do not fall within that rule" (per Lord Denman, in *Tuson* v. *Evans*, 12 A. & E. 733. *Emp.* v. *Slater*, 15 Bom. 351).

It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which has has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith (*Abdul Hakim* v. *Tej Chander*, 3 All. 815).

The plaintiff, a trader, employed an auctioneer to sell off his goods, and otherwise conducted himself in such a way that his creditors reasonably concluded that he had committed an act of bankruptcy. One of them, the defendant, thereupon sent the auctioneer a notice not to pay over the proceeds of the sale to the plaintiff, "he having committed an act of bankruptcy." It was held by the majority of the Court that this notice was privileged, as being made in the honest defence of defendant's own interests (*Blackham* v. *Pugh*, 2 C. B. 611). An insurance company may inform a ship-owner that they must refuse to insure his vessel any longer if he put a particular master in command of her (*Hamon* v. *Falle*, 48 L. J. P. C. 45). The defendants in a printed monthly circular issued to their servants stated they had dismissed the plaintiff for gross neglect of duty. Held, that the occasion was privileged, in the absence of malice or abuse of authority, as it was clearly to the interest of the defendants that their servants should know that gross misconduct would be followed by dismissal (*Hunt* v. *G. N. Ry.*, (1891) 2 Q. B. 189).

Indian cases.—In an action to recover damages for defamation of character brought by the late mooktear and manager of a *parda-nashin* Mahomedan lady who had in a petition to the Munsiff presented that he had discharged the plaintiff from her service, because he had not managed her properties honestly, and had been guilty of misappropriation, it appeared that the plaintiff had rendered no accounts, and had allowed a year to pass before resenting the libel. Held, that the defendant had reasonable grounds for making the statement, and that, in the absence of evidence of malice, the suit was rightly dismissed (*Ameenooddeen* v. *Khroonissa*, 20 W. R. 60; *Ekbal Bahadoor* v. *Solano*, 2 W. R. 164). Plaintiffs and defendants were the members of two firms, each creditors of an absconded debtor one B. The plaintiffs' firm brought a suit to recover the sum alleged to be due to them by the said B, and pending that suit the defendants' firm presented a petition to the Court containing the statements complained of, which were principally to the effect that the plaintiffs had prejudiced the petitioners by suing the said B for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he, accordingly, gave a decree to the plaintiffs with damages. Held, that as the defendants were creditors of an absconded debtor and deeply interested in seeing that his estate was not swept off in satisfaction of an excessive claim made by the earliest suitor, they, in presenting a petition pointing out what they considered suspicious elements in the plaintiffs' claim against such debtor, were at all events entitled to the qualified privilege of persons acting in good faith and making communications with a fair and reasonable purpose of protecting their own interest (*Hinde* v. *Baudry*, 2 Mad. 13). Certain raiyats in a

zemindari village addressed a petition to a Tehsildar praying that the village Munsiff might be retained in office notwithstanding the zemindar's application for his removal. The petition imputed criminal acts to the zemindar, who now sued the petitioners for damages on the ground that the petition contained a false and malicious libel. It was found that in fact the communication was made *bona fide*, and that there was some ground for some of the imputations. Held, that the petition was a privileged communication and the alleged libel was not actionable (*Venkata* v. *Kotayya*, 12 Mad. 374).

2. *Statements provoked by plaintiff.*

Every man has a right to defend his character against false aspersion. It may be said that this is one of the duties which he owes to himself and to his family. If the plaintiff has previously attacked the defendant, any statement made by the latter which is necessary in order to protect himself, and which is in any way relevant to the accusations made against him by the plaintiff, is privileged. Therefore, communications made in fair self-defence are privileged. The privilege extends only to such retorts as are fairly an answer to the plaintiff's attacks (*Odgers*). The privilege in these cases must be used as a shield of defence, not as a weapon of attack.

The privilege may be lost if the extent of publication is excessive, *e. g.*, in a matter of purely local or private importance, it cannot be necessary to write to the "Times" or to advertise. In such a case, the extent given to the announcement is evidence of malice (*Capital & Counties Bank* v. *Henty*, 7 App. Cas. 741). But where the plaintiff has previously attacked the defendant in the newspapers (*Coward* v. *Wellington*, 7 C. & P. 531), or in public, and the latter retaliates by publishing in the papers in self-defence, a statement of the case from this point of view, and in so doing makes a defamatory statement concerning the plaintiff, such statement is privileged, if made *bona fide*.

The plaintiff, a barrister, attacked a Bishop before the House of Keys in an argument against a private bill, imputing to the Bishop improper

motives in his exercise of church patronage. The bishop wrote a charge to his clergy refuting these insinuations, and sent it to the newspapers for publication. It was held, that under the circumstances the bishop was justified in sending the charge to the newspapers, for an attack made in public required a public answer (*Laughton* v. *Bishop of Sodor*, L. R. 4 C. P. 495). Where the policy holder for an insurance company published a pamphlet charging the directors with fraud, and the directors published a pamphlet in reply defending themselves, and accusing the plaintiff of making false and calumnious accusations and further stating that he had upon a certain occasion made statements on oath in direct contradiction of statements which he had previously made in writing; it was held that the defendants did not go beyond the occasion (*Koening* v. *Ritchie*, 3 F. & F. 413; *R.* v. *Valey*, 4 F. & F. 1117).

3. *Statements invited by plaintiff.*

If the only publication that can be proved is one made by the defendant in answer to an application from the plaintiff, or some agent of the plaintiff, demanding explanation, such answer, if fair and relevant, will be held privileged, for the plaintiff brought it on himself (*Odgers*). "If a servant, knowing the character which his master will give of him, procures a letter to be written, not with a fair view of inquiring into the character, but to procure an answer upon which to ground an action for a libel, no action can be maintained" (per Lord Alvanley, in *King* v. *Waring*, 5 Esp. 15).

III. PROTECTION OF COMMON INTEREST.

Every communication made *bona fide*, upon any subject-matter, with the object of protecting an interest common to the writer or a speaker, and the person to whom it is made, is privileged (*Harrison* v. *Bush*, 5 E. & B. 344; *Venkata* v. *Kotayya*, 12 Mad. 377).

This common interest may be in respect of family affairs—*e.g.*, communications made *bona fide* to a lady by her son-in-law as to the character of her intended husband, if he honestly believes him, however erroneously, to be of bad character (*Todd* v. *Hawkins*, 8 C. & P. 88; *Adams* v.

Coleridge, 1 T. L. R. 84); or it may be in respect of money matters—*e. g.*, a letter written by a ratepayer affecting the character of the parish constable, to be read at a parish meeting at which the accounts of the parish were to be considered (*Spencer* v. *Amerton*, 1 M. & R. 470); or in respect of a particular profession or calling—*e. g.*, any thing said by a life governor of a school to its steward concerning one of the tradesmen employed to supply the school (*Humphreys* v. *Stilwell*, 2 F. & F. 590); or in respect of any right or duty recognized by the law—*e. g.*, a letter written by a creditor who had been appointed a trustee in liquidation of a debtor's estate to another creditor (*Spill* v. *Maule*, L. R. 4 Ex. 232), or by a solicitor writing on behalf of his client, and in the ordinary course of his duty to a third party (*Quartz Hill Gold Mining Co.*, v. *Beall*, 20 Ch. D. 509; *Baker* v. *Carrick*, (1894) 1 Q. B. 838—*Fraser*).

But in all these cases the privilege will be lost if the statement is made to an unnecessarily large number of persons and thus spread broad-cast (*Duncombe* v. *Daniell*, 8 C. & P. 222), or contains exaggerated or unwarrantable expressions (*Bromage* v. *Prosser*, 4 B. & C. 247; *Fryer* v. *Kinnersley* 15 C. B. N. S. 422; *Senior* v. *Medland*, 4 H. & N. 843), or extends to matters outside those in which the plaintiff and defendant have a common interest (*Warren* v. *Warren*, 1 C. M. & R. 250),

The defendants, who carried on an insurance business in London, had at one time engaged the plaintiff as their West-end agent, and, the agency having been terminated, the defendants had written and published and sent to their customers a circular in which they stated that "the agency of Lord William Nevill, at 27 Charles Street, St. James's Square, has been closed by the directors." The plaintiff alleged that this statement was untrue, the engagement having been terminated at his instance, and that the statement was calculated to injure him in his business as an insurance agent. It was held, that there was no evidence of express malice on the part of the defendants, so as to deprive them of the privilege arising from the occasion (*Nevill* v. *Fine Art &c. Co.*, (1897) A. C. 68).

Indian case.—M obtained a divorce from his wife on the ground of her adultery with one S. During the course of those proceedings M wrote letters to certain relations of his wife, in which he made defamatory statements regarding the plaintiff. Held, that it was M's duty to write to his wife's relations to explain his conduct and that the person addressed had an interest in receiving the communications and that therefore the communications were privileged (*Bodycote* v. *McMorran*, 4 Burma L. R. 212).

IV. FAIR REPORTS.

Fair reports of (1) Judicial proceedings; (2) Parliamentary proceedings; (3) Quasi-judicial proceedings; and (4) Proceedings in public meetings, are treated as privileged communications.

1. *Judicial proceedings.*

A fair, substantial, *bona fide*, impartial, and correct or accurate report of the proceedings in any Court of justice is privileged; except where the matters given in evidence are (1) of a grossly scandalous, blasphemous, seditious, or immoral tendency (*In re Evening News*, 3 T. L. R. 255), or (2) expressly prohibited by the order of the Court (*Brook* v. *Evans*, 29 L. J. Ch. 616), for it is no advantage to the public, or public justice, that such matters should be detailed (*R.* v. *Carlisle*, 3 B. & Ald. 169). The reason of this privilege is that "the general advantage to the country in having these proceedings made public more than counterbalances the inconvenience to private persons whose conduct may be the subject of such proceedings" (per Lawrence, J., in *R.* v. *Wright*, 8 T. R. 298).

It is not necessary that the report should be verbatim, it must be "substantially a fair account of what took place" (per Lord Campbell, C. J., in *Andrews* v. *Chapman*, 3 C. & K. 289). It is sufficient to publish a fair abstract (per Mellish, L. J., in *Millissich* v. *Lloyds*, 46 L. J. C. P. 404). But eventhough the report is a fair one, yet if it is sent for publication by a person with malicious motives,

an action will lie (*Stevens* v. *Sampson*, 5 Ex. D. 53). The report must not be one-sided, or false, or highly coloured; and if defamatory comments, allegations, and opinions of the reporter are mixed up with it, the privilege is lost (*Stiles* v. *Nokes*, 7 East 492). The report should be confined to what takes place in Court (per Lord Campbell, C. J., in *Andrews* v. *Chapman*, 3 C. & K. 288). It should never be preceded by a title which exaggerates the real facts of the case, otherwise damages may be recovered for the libellous title.

A report of a slanderous complaint publicly heard by a Magistrate without jurisdiction in the matter, or of an application made to him extrajudicially, as for advice, is not privileged (*McGregor* v. *Thwaites*, 3 B. & C. 24). The test of jurisdiction or otherwise, is the nature of the complaint; it is enough if he had jurisdiction supposing the facts alleged to be made out, though in result they were not (*Collett*).

It is immaterial by whom the report is published. The privilege is the same for a private individual as for a public newspaper (*Millissich* v. *Lloyds*, 46 L. J. C. P. 404). There is no special privilege for newspapers (*Rumney* v. *Walter*, 8 T. L. R. 262).

Reports of *ex parte* proceedings are also privileged, whether such proceedings result in the discharge by the Magistrate of the party charged (*Curry* v. *Walter*, 1 B. & P. 525) or not (*Curry* v. *Walter*, 1 B. & P. 525; *Usill* v. *Hale*, 3 C. P. D. 390).

Where judicial proceedings last more than one day, a report published daily is privileged, if fair and accurate, but no comment is allowed until the proceedings terminate (*Levis* v. *Levy*, 27 L. J. Q. B. 287). A fair and accurate report of the judgment in an action, published *bona fide* and without malice, is privileged, although not accompanied by any report of the evidence given at the trial (*Macdougall* v. *Knight*, 25 Q. B. D. 1). The publication without malice of a fair and accurate report of proceedings

in open Court before Magistrates upon an *ex parte* application for a summons for perjury is privileged (*Kimber* v. *Press Asso.*, (1893) 1 Q. B. 65).

2. *Parliamentary proceedings.*

Every fair and accurate report of any proceedings in either House of Parliament, or in any committee thereof, is privileged; eventhough it contain matter defamatory of an individual (*Goffen* v. *Donnelly*, 6 Q. B. D. 307). A faithful report in a newspaper, of a debate of either House of Parliament, containing matter disparaging to the character of an individual which had been spoken in the course of the debate, is not actionable at the suit of the person whose character has been called in question (*Wason* v. *Walter*, L. R. 4 Q. B. 73).

Fair and legitimate criticism in newspapers on the conduct or motives of individuals, as disclosed by such reports, is also privileged (*ibid*).

3. *Quasi-judicial proceedings.*

Reports of their proceedings published by quasi-judicial bodies, *bona fide* and without any sinister motive, are privileged (*Albut* v. *General Council &c.*, 37 W. R. 771). If, however, the statement is published maliciously, the privilege is gone, as there is no *absolute* privilege in such cases (*Royal Acquarium Co.* v. *Parkinson*, (1892) 1 Q. B. 431). In speeches before local boards, County councils, and the like, although the occasion is privileged, the privilege is not (as in the case of Parliament) absolute, and the speaker is only protected in the absence of express malice. The privilege may be rebutted by showing that from some indirect motive, such as anger, or gross and unreasoning prejudice with regard to a particular subject-matter, the defendant stated what he did not know to be true, reckless whether it was true or false (*Pittard* v. *Oliver*, (1891) 1 Q. B. 474).

4. *Proceedings in public meetings.*

"Any meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted," is a public meeting. A report in a newspaper of the proceedings of a public meeting is privileged, provided it is (1) fair, (2) accurate, (3) not blasphemous, and (4) not indecent. The privilege may be rebutted by showing (1) that the report was published maliciously; or (2) that the defendant has refused or neglected on request to insert in the same newspaper a reasonable letter by way of contradiction or explanation of such report. Also the public position of the person criticized and the subject-matter dealt with, must be of a general interest to the whole country; if the position or matter be only of a limited local kind, or the meeting not necessarily or properly a public one, there is no privilege (*Purcell* v. *Sowler*, 1 C. P. D. 788).

Remedies for defamation.

As to the remedies for defamation, not only may a suit for damages be brought, but the publication of defamatory statements may be restrained by injunction: see Specific Relief Act, I of 1877, s. 55, ill. (*e*).

Who can sue.—*Indian law.*—A suit for defamation can only be brought by the person actually defamed, if the person is *sui juris*, and if not *sui juris*, then under the provisions of the Civil Procedure Code, by his guardian or next friend (*Daya* v. *Param Sukh*, 11 All. 104). The fact that a defamatory statement has caused injury to other persons does not entitle them to sue (*Luckumsey* v. *Hurbun*, 5 Bom. 580).

In a suit for damages for defamation, it appeared that the words complained of were spoken by the defendant to the plaintiff in the presence of a third party and were to the effect that the plaintiff's wife had committ-

ed adultery with a pariah, and that her children had been born to the pariah. In holding that the suit was not maintainable by the plaintiff, Muttusami Ayyar, J., remarked: "Suppose the wife brought an action against defendant, would it be a good defence to say that though she was the person slandered, it was only intended to insult her husband? If not, the rule that a slanderer should not be liable to as many actions as there are relations would be violated. I would follow the principle laid down in *Subbaiyar* v. *Kristnaiyar*, (1 Mad. 383), *Luckumsey* v. *Hurbun* (5 Bom. 580), and *Daya* v. *Paramsukh* (11 All. 104)" (*Brahmanna* v. *Ramakrishna*, 18 Mad. 25).

It has been held that a brother cannot sue for slander of his sister (*Subbaiyar* v. *Kristnaiyar*, *sup.*); nor a heir and nearest relation of a deceased person for defamatory words spoken of the deceased (*Luckumsey* v. *Hurbun*, *sup.*); nor a father for slander of his daughter (*Daya* v. *Paramsukh*, *sup.*)

Husband and wife.—Whenever words actionable *per se* are spoken of a married woman, she may sue alone, or she may join her husband as co-plaintiff, in which case he will be entitled to recover in the same action for any special damage that may have occurred to him (*Harwood* v. *Hardwick* 2 Keb. 387). When the words are not actionable *per se*, she may sue, provided she can show that some special damage has followed from the words to *her*. That special damage has accrued to her husband in consequence of such words will not avail her (*Ibid*); he alone can sue for such damage, although it is *her* reputation that has been assailed (*Odgers*, see also *Luckumsey* v. *Hurbun*, 5 Bom. 583).

A wife, living apart from her husband under a separation order, can maintain an action of libel against him (*Robinson* v. *Robinson*, 13 T. L. R. 564).

Corporation.—The right of a corporation to sue for libel is confined to the protection of their property. It cannot, for instance, maintain an action for libel charging the corporation with corruption, for it is only the individuals, and not the corporation in its corporal capacity, who can be guilty of such an offence (*Mayor of Manchester* v. *Williams*, (1891) 1 Q. B. 94). But it can maintain an action of libel in respect of a statement reflecting on its

character in the conduct of its business (*South Hetton Coal Co.* v. *N. E. N. Asso.*, (1894) 1 Q. B. 133).

A corporation is liable for libel (*Nevill* v. *Fine Arts Ins. Co.*, (1895) 2 Q. B. 156) or slander published by its servants or agents, where such publication has been expressly authorized (*Yarborough* v. *Bank of England, sup.*; *Latimer* v. *W. M. News*, 25 L. T. 44; *Abrath* v. *N. E. Ry*, 11 App. Cas. 253); or in the case of libel where such publication is in pursuance of the general orders given to such servants or agents (*Whitfield* v. *S. E. Ry.*, E. B. & E. 115).

Damages for Libel and Slander.—The damages recoverable in actions for defamation will materially depend upon the nature and character of the libel, the extent of its circulation, the position in life of the parties, and the surrounding circumstances of the case (*Tripp* v. *Thomas*, 3 B. & C. 427).

The damages must be assessed once for all (*Gregory* v. *Williams*, 1 C. & K. 568); no fresh action can be brought for any subsequent damage (*Fither* v. *Veal*, 12 Mod. 542), except where the words are not actionable *per se*. The Court should take into consideration not only the damage that has accrued, but also such damage, if any, as will arise from the defendant's defamatory words in the future (*Townsend* v. *Hughes*, 2 Mod. 150; *Ingram* v. *Lawson*, 1 Scott 471).

A civil Court is not bound to give damages for defamation after the defendant has been convicted and fined for the offence in the criminal Court where plaintiff has suffered no actual damage (*Ooma Churn* v. *Girish Chunder* 25 W. R. 22).

Aggravation of damages.—The violence of the defendant's language, the nature of the imputation conveyed, and the fact that the defamation was deliberate and malicious, will of course enhance the damages. The Court will

also consider the rank or position in society of the parties, the fact that the attack was entirely unprovoked, that the defendant could easily have ascertained that the charge he made was false. It may also be shown that the defendant was culpably reckless or grossly negligent in the matter. The defendant's subsequent conduct may aggravate the damages, *e. g.*, if he has refused to listen to any explanation, or to retract the charge he made, or has only tardily published an inadequate apology. The defendant's conduct of his case, even the language used by his counsel at the trial, may aggravate the damages (*Darly* v. *Onsley*, 25 L. J. Ex. 230).

The following factors should also be taken into consideration:

(1). *Extent of publication.*—The extent of the damage which defamatory matter causes must clearly depend to a great degree upon the extent of the publicity given. It is one thing for a man to be libelled in a private letter read by a single correspondent, another for him to be held up to the hatred, contempt, or ridicule of the general public in a newspaper or placard.

(2). *Spirit and intention.*—The spirit and intention of the party publishing a libel are fit to be considered by a Court in estimating the injury done to the plaintiff (*Pearson* v. *Lemaitre*, 5 M. & G. 720).

(3). *Special damage.*—A plaintiff is entitled to damages by reason of the mere probability that consequences injurious to him may ensue from the defamation, but he may strengthen his case by proving that such consequences have in fact ensued.

Mitigation of damages.—It is permissible to a defendant to seek to mitigate the damages to be awarded against him, by proving circumstances which show that he did not

act with deliberate malice, or by impeaching the general reputation of the plaintiff.

1. *Evidence falling short of a justification.*—A defendant may give evidence in mitigation of damages that a certain specified portion of the defamatory words is true, provided such portion conveys a distinct imputation on the plaintiff and is divisible from the rest and yet intelligible by itself (*McGregor* v. *Gregory*, 11 M. & W. 287; *Churchill* v. *Hunt*, 2 B. & Ald. 685; *Clarke* v. *Taylor*, 2 Bing. N. C. 654).

2. *Absence of malice.*—In every case, the defendant may, in mitigation of damages, give evidence to show that he acted in good faith and with honesty of purpose and not maliciously (*Pearson* v. *Lemaitre*, 5 M. & G. 700). The defendant's subsequent conduct may mitigate the damages, *e. g.*, if he showed himself open to argument, listened to the explanations that were offered him, stopped the sale of the libel as soon as a complaint reached him.

3. *Apology.*—In an action for libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper or periodical publication without actual malice and without gross negligence, and that before the commencement of the action, at the earliest opportunity, an apology was asked (6 & 7 Vic. c. 96, s. 2).

4. *Mere repetition.*—If the defendant in repeating the story as it reached him gives it as hearsay, and states the source of his information, then, but only then, is the fact that he did not originate the falsehood, but innocently repeated it, allowed to tell in his favour, as proving that he bore the plaintiff no malice (*R.* v. *Burdett*, 4 B. & Ald. 74; *Mullet* v. *Hulton*, 4 Esp. 248).

5. *Provocation.*—It is a mitigating circumstance if the publication of the defamatory matter takes place under cir-

cumstances of strong provocation. Such provocation must, however, be *in pari materia* with retaliation. Evidence that the plaintiff had been in the habit of libelling the defendant is admissible in mitigation of damages (*Finnerty* v. *Tipper*, 2 Camp. 76).

6. *Bad reputation of the plaintiff.*—It may be shown in mitigation that the plaintiff's previous character was so notoriously bad that it could not be impaired by any fresh accusation, eventhough undeserved. General evidence of bad character is admissible in mitigation, since damages must depend upon the reputation which the plaintiff already had; otherwise the same measure of damage would be given to a thief or a prostitute as to an honest man or woman.

Injunction.—The Court has jurisdiction in an action of libel or slander to restrain by injunction either before or at the trial any further publication of such libel or slander, but in the former case the jurisdiction would be exercised with great caution (*Quartz Hill Gold Mining Co.* v. *Beall*, 20 Ch. D. 501). In order to obtain an *interim* injunction the plaintiff must prove that the words complained of are untrue (*Burnett* v. *Tak*, 45 L. T. 743; *Collard* v. *Marshall*, (1892) 1 Ch. 571); and that, therefore, any subsequent publication by the defendant would be *mala fide* (*Halsey* v. *Brotherhood*, 19 Ch. D. 336), and, further, that unless at once restrained, such statements will cause immediate and irreparable injury to person or property (*Solomon* v. *Knight*, (1891) 2 Ch. 294). Where the words complained of affect the plaintiff in the way of his business, irreparable injury would be presumed (*Thomas* v. *Williams*, 14 Ch. D. 864). Grant of an *interim* injunction involves a decision by the Court on motion of the whole question at issue in the suit—libel or no libel—a decision which the Court will naturally be very loth to make, except in the clearest cases

(*Bonnard* v. *Perryman*, (1891) 2 Ch. 269; *Monson* v. *Tussad*, (1894) 1 Q. B. 671). If the evidence is conflicting as to the truth of statements complained of, the Court will, of course, not grant an injunction (*Plumby* v. *Perryman*, (1891) W. N. 64). Where the libel complained of is on the face of it too gross and absurd to do the plaintiff any material harm an injunction will not be granted.

The defendant in a libel action after losing the case continued to publish documents repeating the libels complained of. Held, that the Court has jurisdiction to grant an interlocutory injunction to restrain further publication of the libel (*Collard* v. *Marshall*, (1892) 1 Ch. 571). But such injunction would be refused on the ground that there was no danger of injury to plaintiff in person or property as to make it right to grant it (*Solomons* v. *Knight*, (1891) 2 Ch. 294).

Indian law.—In India, as in England, the Courts have jurisdiction to restrain a libel by injunction, *viz.*, under the terms of the first clause of section 54 of the Specific Relief Act. The High Court of Bombay held in 1876 that the Court would not restrain by injunction the publication of matter alleged to be defamatory, but that decision was prior to the commencement of the Specific Relief Act which came into force on the 1st May 1877 (*Shepherd* v. *The Trustees of the Port of Bombay*, 1 Bom. 132; following *Prudential Assurance Co.* v. *Knott*, L. R. 10 Ch. 142).

Joint action.—An action for *slander* cannot be brought jointly against several defendants; separate actions should be brought against each. Each person sued for verbal slander is responsible only for what he himself has uttered, and plaintiff is not entitled to bring him before the Court while he is proving his case against another defendant for what the first defendant is not himself responsible. In *libel*, each person is liable, for the entire publication, and therefore they may be properly sued together (per Pontifex, J., in *Nilmadhub* v. *Dookeeram*, 15 B. L. R. 166). But an action for *slander* may be brought jointly against

several defendants where the words spoken are not actionable *per se*, but only become so by reason of the special damage, which is the result of the conjoint action of all the defendants (*Woozeerumissa Bibee* v. *Syed Mahomed*, 15 B. L. R. 166*n*.).