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-