

upon jurors and witnesses. It is again necessary, in this connection, to call attention to the distinction between questions of jurisdiction and of the proper exercise of jurisdiction.

It was formerly the rule in England that publications in judicial proceedings were absolutely privileged only when they were relevant or pertinent to the proceeding. But this limitation has now been abandoned in England, and immunity attaches, as pointed out above, to every publication in the course of judicial proceedings which has reference or relation thereto, although it may be immaterial or irrelevant to the issues involved. In this country, however, it is almost universally held that the publication must be relevant or material to be absolutely protected. The only exceptions are that in Maryland the English doctrine has been adopted with respect to witnesses, and in Vermont with respect to jurors, although the courts of Kentucky, Alabama and Texas have expressed opinions favourable to that view. Much judicial eloquence has been expended in support of the American doctrine. Judges have been startled to think that a court of justice should be the only place where reputation may be assailed with impunity. It is freely admitted that freedom of speech is nowhere more needed than in the courts, where it has been the immemorial privilege of participants, and the guaranty of the faithful and fearless performance of their duties. But freedom of speech does not mean licentiousness. The cause of justice can never be served by the perpetration of palpable injustice, and no just rule of public policy can fail to distinguish between reasonable freedom of speech and wanton malice. A person defamed ought to be able to vindicate his reputation in the courts instead of taking the law into his own hands. The law would be a vain thing indeed to shut the gates of justice in his face, and at the same time fetter his hands. The short answer to this line of reasoning, from the English point of view, is that the requirement of relevancy deprives the immunity of its real value. If participants in judicial proceedings may be sued for utterances assumed to be irrelevant to the inquiry, they would be subjected to the expense and vexation incident to the defense of