

servant can recover in any given instance on the ground of express malice is a question to be determined with reference to considerations similar to those which are controlling in all actions for defamation⁹.

terested, and both acting strictly within the line of duty, as being engaged in procuring the information necessary to enable them to fill out the card which was to be delivered to him the plaintiff. It was held that there was no undue public dissemination of the contents of the book; and that there was nothing in the evidence which indicated that care was not taken to confine the information to persons who were directly interested, and whose duty it was to know the reason for plaintiff's dismissal from defendant's service.

Where a notice to the effect that a railway servant has been discharged for insubordination is posted in various rooms set apart for his fellow servants, but sometimes visited without authority by members of the public, the communication is privileged. *McDonald v. Board of Works* (1874) 5 Austr. J. Rep. 34.

In *Missouri P.R. Co. v. Richmond* (1881) 73 Tex. 508, 4 L.R.A. 280, 11 S.W. 555, it was held that, in the absence of actual malice, an action for libel would not lie against a railway company for the circulation of a "black list" among the superior officials who employed men upon its own line. The court said: "Looking to the public interests involved in the safe operation of railways as well as the interests of their owners, it seems to us that one having reasonable ground to believe that a person seeking important positions in that service was incompetent, careless, or otherwise unfit would be under such obligation to communicate his knowledge or belief to all persons likely to employ such unsuitable person in that business as would make the publication privileged if made in good faith."

See also the next note.

⁹ In *Tench v. Great Western R. Co.* (1873) 33 U.C.Q.B. (C.A.) 8, Rev'g 32 U.C.Q.B. 452, it was held by six out of nine judges that the evidence shewed a reasonable mode of publication, and no excess such as to take away the privilege or shew malice. Draper, C.J., one of those who took this view argued thus: "The station-master's offices or the booking offices in the cases pointed out, appear to me proper places for the notice to reach those to whom it was addressed, and the caution which McGrath was directed to give the employes in regard to these placards, shews a careful intent to do no more than was necessary to convey the information to those who ought to receive it. McGrath swears he did what he was ordered and no more. I think there was no evidence of express malice to be submitted to the jury." Spragge, C., one of the dissenting judges, expressed the opinion that, in the circulation of the paper in question, much more was done than was sufficient to answer all the legitimate purposes of the occasion: It was posted up, and kept posted up in some places for weeks, and in others for months, in offices of the company called private, but to which others than servants of the company obtained access, and there saw and read it, and in some of those offices in a conspicuous place, where it could be seen and read from the wicket at which the public purchased their tickets." Richards, C.J. also considered that the putting up of this notice in the offices of the company in such places as they could be seen by others than employes, without its being shewn there was any paramount necessity therefor, and the pasting it in the books of certain officers of the company, was independent evidence of malice to go to the jury."

In *Bacon v. Michigan C.R. Co.* (1887) 86 Mich. 166, 33 N.W. 181, the