

(*prima facie*) privileged, and that the privilege is not limited in territory. And if such circulation is privileged, it cannot be limited in that way without absurd consequences. A member of the House of Representatives delivers a speech there, containing defamatory reflections upon some one; on the next day he is transferred to the Senate, and the same speech, with the same reflections, is delivered there; must the speaker be confined to the particular district which he represented in the House, in circulating the first speech, while he has the whole State for the second? Again, the subject of the reflections themselves may concern the whole country, as in the case of an impeachment; in such a case shall one who represents a very poor and degenerate constituency, *e.g.*, the lower part of the city of New York, have the right to circulate his speech there, where it will probably have no effect for any purpose, and be cut off from circulating it among more enlightened people? Again, if a "fair report" of the proceedings of the body may be published (without malice), by newspapers circulating generally, how can it be that a member of that body must not circulate his own speech—assuming that it contains or is accompanied with a fair report of the proceedings—beyond his constituency? Once more, a member's constituency is migratory part of the year, as from June till October; must the member withhold his speeches during that time for fear that, if he sends them for distribution, addressed generally to the postmaster of a common resort of his constituents, copies may be delivered to persons not of his district or State?

It is plain then that any concession that a member of the Legislature may send his speeches to his constituents is a yielding, in this country, of the whole argument (see *Story, ut supra*) against privilege in such cases. And, further, the existence of a privilege itself, for the circulation of a speech by the person who made it, is in ordinary cases warranted and required by the general rule already referred to, by which fair reports of the proceedings may be privileged. "In ordinary cases," we say, for generally the printed sheet contains a sufficient report of the occasion. The real difficulty, so far as there is any difficulty, is with the circulation of speeches which would not be privileged on the footing of a publication, *e.g.*, in the newspapers, of a fair report of the proceedings. And in regard to that case, it is hard to see any reason which can justify circulation among a member's constituency without justifying circulation generally. It is hard to justify either. The true rule, it is apprehended, should be to put the circulation of speeches altogether upon the footing of fair reports, justifying the speaker only as he would be justified as the publisher of a newspaper reporting to the world the proceedings of the Legislature.

It is now too late, however it may have been sixty years ago (Story wrote in 1832), to question a privilege of fair reports; and as for the doctrine of privilege itself, that of course is fundamental. Society could not long exist if to do harm, whether in self-protection or in the discharge of duty, were not permitted. It is only necessary that the justification should be limited to the reasonable requirements of the particular case. I may do harm to my neighbor only in so far as may reasonably appear necessary in the discharge of duty or in protecting myself, my family, or my property.