

11. The rule of law and its exceptions.

The application of these distinctions in malice and privilege to libel is simply a roundabout way of saying, that, as a general rule, it is a crime to publish defamatory matter, but that there are certain exceptions which do not make it a crime. These are: (1) When the defamatory matter is true, and its publication, as to time and manner, is for the public benefit; (2) when the defamatory matter is false; but (a) the libeller in good faith believes it to be true, and publishes it for certain specified reasons; or, (b) although knowing it to be false, he publishes it in a particular character.

The learned author remarks that by working out this rule, and by simply declaring that the publication of a libel is always malicious, unless it falls within any of the exceptions, "the intricate fictions about malice in law and in fact, and absolute and qualified privilege, may be dispensed with. They are merely the scaffolding behind which the house was built, and now that the house is convenient and proximately complete, the scaffold may be taken down:" Steph. Dig. Note 10, pp. 383-5.

12. Non-user of "malice" and "malicious" in libel sections of the Code.

The libel sections of the Code, it will be noticed, are in accord with these views. The authors of the English Draft Code, 1879-80, upon which our own Code is largely based, state in their report that they have avoided the use of the word "malice" throughout the Draft, because there is a considerable difference between its popular and its legal meaning. For example, the expression "malice aforethought," in reference to murder, has received judicial interpretation which makes its use positively misleading. And, for the same reasons, they have so defined the criminal law of libel as to dispense with the use of the word "maliciously." So also the term "malicious" is nowhere applied by the codifiers of the law of Canada to libel as a crime. The actual intention, or other culpable frame of mind, is set forth under its proper and intelligible name. In the definition of defamatory libel the special design of the defamatory matter—"designed to insult;" or, where that is not necessary, the