

From the nature of the case the publication of a libel must be intentional; and as it has been held that to publish matter defaming another is, generally speaking, a wrongful act, the result is, that every such publication is a crime, impliedly malicious, unless there is some "just cause or excuse" for it.

#### 10. Legal relations of malice and privilege.

What constitutes "just cause or excuse" has been decided in a multitude of cases, in which defamatory matter that was deemed lawful to publish was described as a "privileged communication." This "privilege" has been regarded as rebutting the inference of malice arising from the fact of publication. It may be an absolute privilege, which will justify the publication, whatever may be the state of mind of the publisher. Or, it may be a qualified privilege, which will justify the publication only under particular circumstances, *e.g.*, when the publisher in good faith believes the defamatory matter to be true, when the defamatory matter actually is true, and its publication is for the public benefit, etc. "The law thus falls," as Mr. Justice Stephen remarks, "into the singular condition of a see-saw between two legal fictions, implied malice on the one hand, and privilege, absolute or qualified, on the other." And he gives the following instance of the intricacy to which this leads. A writes of B to C, "B is a thief." Here the law implies malice from the words used. It appears that B was a servant, who had been employed by A, and was trying to get into C's employment, and that A's letter was in answer to an enquiry from C. Here the occasion of publication raises a qualified privilege in A, *viz.*, the privilege of saying to C that B is a thief, qualified by the condition that A really thinks that he is one, and the qualified privilege rebuts the implied malice presumed from the fact of publishing the defamatory matter. B, however, proves not only that he was not a thief, but that A must have known it when he said that he was. This raises a presumption of express malice, or malice in fact in A, and proof of the existence of express malice overturns the presumption against implied malice raised by the proof of the qualified privilege.