

only given for the grosser kind of words, such as impute positive crimes or charge a person with contagious disorders which tend to expel him from society; but under our system the rules of law applicable to the two are absolutely identical, save that written defamation is deemed of greater gravity than words spoken, so that there can be no objection to them being as in the present case included in the same complaint, that is in the same action. While the circular complained of may be treated as written defamation, the information given verbally in answer to the enquiries it elicited considered as verbal slander is yet appropriately joined in the same complaint. Again, as regards defence. What in France would be considered a confidential communication would not give a title to a claim for reparation unless dictated by actual malice, while in England the same idea has given rise to a multitude of fine distinctions elaborated by the judges under the term of privileged communications. Such commercial agencies are conceded to be a necessity of modern commerce and, if conducted within reasonable limits, the occupation is said to be lawful and commendable, but there is no special rule of law or exemption applicable to them which is not the common right of others. In general an action lies for the publication of statements which are false in fact and injurious to the character of another. Such publications are presumed to be malicious, but such presumption may be removed by proof for the defence that they were fairly made in discharge of some public or private duty, legal or moral, or in matters where required for the protection of the defender's own interest. Under the English system if the statements are fairly warranted by any reasonable occasion or exigency and honestly made, such communications are held to be privileged and are protected for the common convenience and welfare of society. It should nevertheless be borne in mind by such institutions that they conduct a business of peculiar delicacy, on which the reputation and fortunes of those engaged in trade may depend, and it behooves them to be especially guarded in treating of the character and standing of those on whom they report and as to the persons to whom they communicate their estimate of their standing. They are employed to fulfil the role of moral and financial detectives to ferret out the loss of strength in persons and firms, and give forewarning of impending disasters or diffi-

culties likely to render hazardous giving to them credit. It therefore becomes highly important to determine to what extent this doctrine of privilege can fairly be invoked by them, and whether that doctrine would give them complete immunity under the circumstances of the present case. It may be assumed that privileged communications are such as would be considered defamatory if not made on occasion which rebut the presumption of malice; that such privilege is not absolute, but qualified, and may be rebutted by proof of actual malice; also that every defamatory publication implies malice but subject to be rebutted. In reference to the present case take Lord Campbell's definition of privilege in the case of *Harrison vs. Bush*, 5 Ellis and Blackburn's reports, p. 343: A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contained criminations matter which without this privilege would be slanderous and actionable. It may be said that in this case the interest and duty existed in the party communicating the information, and the interests existed in some although not in all of those to whom it was communicated. As regards the bona fides of the communication, this depended upon the question how far the appellants were warranted in giving currency to the rumor; whether they exercised reasonable precaution in ascertaining what foundation existed for it and whether they confined themselves strictly to the terms of the information as received by them or added anything to its credibility by its adoption and propagation by them. The proof shows that only a small number of the 600 to whom the circular was sent and only a few of those to whom the after-communications were made had any interest in the credit or standing of Carsley & Co. Both as regards this point and the question of *bona fides*, Judge Allison, of Philadelphia, in the case of the *Commonwealth vs. Stacey* remarks: There is no great hardship imposed on an agency of this kind if they are required to know beforehand that their statements are true, and that the persons to whom they are sent have an interest in receiving the information, and this could be accomplished by requiring every subscriber to furnish the agency from time to time the names of the persons with whom they had established business relations or who may