

accused may be able to shew that, though the matter is defamatory, it was published on a privileged occasion, or he may be able to avail himself of the statutory defence that the matter complained of was true, and that its publication was for the public benefit; and those classes of cases were meant to be excluded from the purview of the section by the use of the word "maliciously:" *Reg. v. Munslow* L.R. (1895) 1 Q.B. 758.

8. Objections to the term "malicious."

But, as is sometimes pointed out by the commentators, the word "malicious," although now well understood in law, is not apt for the purpose, because in its natural meaning it refers to the motives, and not to the intentions, of a man's conduct. There is undoubtedly the vague feeling, both in text writers, judges and juries, that malice, except when qualified by some term shewing that it does not mean malice, always signifies either spite against a definite individual, or the general desire to do injury to some one, which Austin styles malevolence. (Austin's Lectures 12 and 20.) This is the natural, i.e., the ordinary use of the word; and the legal use of a common word in a non-natural sense is, to say the least of it, undesirable. (Clarke on Criminal Liability, 94.) To make motive the test of criminality tends to harmonize law with popular feeling, but it is none the less objectionable. The mischief of the act depends upon the intention, not upon the motives, which are mixed and vary and cannot be precisely determined; while the effect of the legal fiction of dividing malice into malice in law and malice in fact is to impute bad motives where intentional misconduct, not prompted by bad motives, is proved.

9. The law as settled.

The law as it stands, on this point, has been settled by a sort of circuitous process. Malice in fact is personal spite, which, according to some jurists, is its original and proper meaning. (See Austin's Lectures 12, p. 355, and 20, p. 446.) Malice in law, as already stated, is a wrongful act done intentionally without just cause or excuse. (*Bromage v. Prosser*, supra.)