

such an action, even though they succeed in demonstrating the pertinency of the language complained of. The liability to suit will fetter them quite as much as any apprehension of the consequences of an action. They cannot know with certainty what may be considered irrelevant, and the mere fact that they are liable to action at all deprives them of the freedom which the administration of justice demands.

In the practical application of the relevancy doctrine, the apprehensions which led to its abandonment in England have not been realized. Litigation has not been promoted, and in comparatively few cases has immunity been denied on the ground of irrelevance. On the other hand, it can hardly be asserted that an examination of the cases in which the relevancy of publications was involved demonstrates conclusively the utility of the rule. In almost every instance it would seem that the harm done could have been overcome, or at least materially minimized, in the exercise of the lawful powers of the presiding judge. Moreover, this restriction has entailed further confusion in terminology. Although the original, and still the usual, term is "relevant," or "pertinent," the tendency is toward a broader terminology. "Having reference or relation" to the subject-matter is the statement of the American rule made by some courts; which, it is to be observed, is precisely the manner in which the broader English rule is stated by later authorities. Some of the applications of the rule reveal the vanishing point of relevancy, in the ordinary sense of that term, and seem to justify a broader and less technical terminology. At all events, it is held that doubts are to be resolved in favour of relevancy and pertinency; that is to say, the matter to which the privilege does not extend must be so palpably wanting in relation to the subject-matter of the controversy that there can be no reasonable doubt of its impropriety. Mere coarseness of expression will not destroy the immunity.

Some presumptions have been formulated which are of material assistance in the practical application of the rule to witnesses and counsel. The disinterested witness occupies a position which requires the widest latitude in administering the rule. Witnesses