

holder, the following letter: "I think you know that at the time of my recent visit to Bridgetown I relieved Mr. O. S. Miller of our local agency. As you and your husband have evidently taken a kindly interest in Mr. Miller, I might say to you without entering into details as to the causes which compelled me to take this action, an explanation of which would hardly be appropriate here that we have tried for a considerable time past to get Mr. Miller to attend properly to our business, and that it was only because it was clearly necessary that the change was made. In order to give Mr. Miller an opportunity to get the benefit of commissions on as much outstanding business as I could, I left the attention of certain matters in Mr. Miller's hands on the understanding that he would attend to them and remit to me as our representative. I now find that he has collected money which up to the present time we have been unable to get him to report, and I am told that he is doing and saying all he can against myself and the company. The receipt for your premium fell due May 30th, days of grace June 30th. If you have made settlement of the premium with Mr. Miller your policy will, of course, be maintained in force, and we shall look to him for the returns in due course; but I have thought that it would be part of the plan Mr. Miller at one time declared he would follow in order to cease as much of our business as possible, that he would allow your policy to lapse through inattention. As I have thought that you would not like to have it so I am prompted to write you this letter and shall be glad if you will advise us whether or not you have made settlement with Mr. Miller. If not, what is your wish in regard to continuing the policy."

In an action by M. for libel it was shewn that he had not been dismissed from the agency, but wanted larger commissions in continuing which were refused, and that he was not a defaulter but was dilatory in making his returns. On the trial Mrs. Freeman gave evidence subject to objection, of her understanding of the letter as imputing to M. a wrongful retention of money.

*Held*, that such evidence was improperly received and there was a miscarriage of justice by its admission.

The judge at the trial charged the jury that "if the meaning of the first part of the letter is that he dismissed the plaintiff, and you decide that he did not dismiss the plaintiff, and it was not a correct statement, that is malice beyond all doubt. The protection which he gets from the privileged occasion is all gone. He loses it entirely. The same way with the second part. If it is not true it is malicious and his protection is taken away."

*Held*, that this was misdirection; that the question for the jury was not the truth or falsity of the statements, but whether or not, if false, the defendant honestly believed them to be true; and that it was misdirection on a vital point.

The majority of the Court were of opinion (GIROUARD and DAVIES, JJ., contra) that as defendant had asked for a new trial only in the Court