

been written to some person other than the person of whom it is written. If the statement is sent straight to the person of whom it is written, there is no publication of it; for you cannot publish a libel of a man to himself. If there was no publication, the question whether the occasion was privileged does not arise. If a letter is not communicated to any one but the person to whom it is written, there is no publication of it. And if the writer of a letter locks it up in his own desk, and a thief comes and breaks open the desk and takes away the letter and makes its contents known, I should say that would not be a publication. If the writer of a letter shows it to his own clerk in order that the clerk may copy it for him, is that a publication of the letter? Certainly it is showing it to a third person; the writer cannot say to the person to whom the letter is addressed, "I have shown it to you and to no one else." I cannot therefore feel any doubt that if the writer of a letter shows it to any person other than the person to whom it is written, he publishes it. If he wishes not to publish it, he must, so far as he possibly can, keep it to himself, or he must send it himself straight to the person to whom it is written. There was therefore in this case a publication to the type-writer.

Then arises the question of privilege, and that is, whether the occasion on which the letter was published was a privileged occasion. An occasion is privileged when the person who makes the communication has a moral duty to make it to the person to whom he does make it, and the person who receives it has an interest in hearing it. Both these conditions must exist in order that the occasion may be privileged. An ordinary instance of a privileged occasion is in the giving a character of a servant. It is not the legal duty of the master to give a character to the servant, but it is his moral duty to do so; and the person who receives the character has an interest in having it. Therefore the occasion is privileged, because the one person has a duty and the other has an interest. The privilege exists as against the person who is libelled; it is not a question of privilege as between the person who makes and the person who receives the communica-

tion; the privilege is as against the person who is libelled. Can the communication of the libel by the defendants in the present case to the type-writer be brought within the rule of privilege as against the plaintiffs—the persons libelled? What interest had the type-writer in hearing or seeing the communication? Clearly she had none. Therefore the case does not fall within the rule.

Then again, as to the publication at the other end—I mean when the letter was delivered. The letter was not directed to the plaintiffs in their individual capacity; it was directed to a firm of which they were members. The senders of the letter no doubt believed that it would go to the plaintiffs; but it was directed to a firm. When the letter arrived it was opened by a clerk in the employment of the plaintiffs's firm, and was seen by three of the clerks in their office. If the letter had been directed to the plaintiffs in their private capacity, in all probability it would not have been opened by a clerk. But mercantile firms and large tradesmen generally depute some clerk to open business letters addressed to them. The sender of the letter had put it out of his own control, and he had directed it in such a manner that it might possibly be opened by a clerk of the firm to which it was addressed. I agree that under such circumstances there was a publication of the letter by the sender of it, and in this case also the occasion was not privileged for the same reasons as in the former case. There were therefore two publications of the letter, and neither of them was privileged. And there being no privilege, no evidence of express malice was required; the publication of itself implied malice. I think the learned judge was misled. I do not think that the necessities or the luxuries of business can alter the law of England. If a merchant wishes to write a letter containing defamatory matter, and to keep a copy of the letter, he had better make the copy himself. If a company have deputed a person to write a letter containing libellous matter on their behalf, they will be liable for his acts. He ought to write such a letter himself, and to copy it himself, and if he copies it into a book, he ought to keep the book in his own custody.