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COURT OF APPEAL.

London, Dec. 19, 1890.

PULLMAN V. WALTER HILL & Co., LIMITED.

Libel—Publication—Letter copied by Clerk—Letter addressed to partnership firm—Privilege.

An alleged libel was contained in a letter respecting the plaintiffs, two of the members of a partnership, written on behalf of the defendants, a limited company, and sent by post in an envelope addressed to the firm. The writer did not know that there were other partners in the firm. The letter was dictated by the managing director of the defendants to a clerk, who took down the words in shorthand and then wrote them out in full by means of a type-writing machine. The letter thus written was copied by an office-boy in a copying press. When it reached its destination, it was in the ordinary course of business opened by a clerk of the firm, and was read by two other clerks. Held, that the letter must be taken to have been published both to the plaintiffs' clerks and the defendants' clerks, and that neither occasion was privileged.

Motion by the plaintiffs for a new trial. At the trial before Day, J., with a jury, it appeared that the plaintiffs were members of a partnership firm of R. & J. Pullman, in which there were three other partners. The place of business of the firm was No. 17 Greek street, Soho. The plaintiffs were the owners of some property in the Borough road, which they had contracted in 1887 to sell to Messrs. Day & Martin. The plaintiffs remained in possession of the property for some time, and agreed to let a hoarding, which was erected upon the property, at a rent to the defendants, who were advertising agents, for the display of advertisements. In 1889 a dispute arose between the plaintiffs and Day & Martin, who were building upon the land, as to which of the two were entitled to the rent of the hoarding; and on September 14, 1889, the

defendants, after some prior correspondence, wrote the following letter:

"Messrs. PULLMAN & Co., 17 Greek street, Soho. Re Boro' Road:

"DEAR SIRs.—We must call your serious attention to this matter. The builders state distinctly that you had no right to this money whatever; consequently it has been obtained from us under false pretences. We await your reply by return of post.

"Yours faithfully,

(Signed,) WALTER HILL & Co., LIMITED."

The letter was dictated by the defendants' managing director to a shorthand clerk, who transcribed it by a type-writing machine. This type-written letter was then signed by the managing director, and having been press-copied by an office-boy, was sent by post in an envelope addressed to Messrs. Pullman & Co., 17 Greek street, Soho. The defendants did not know that there were any other partners in the firm besides the plaintiffs. The letter was opened by a clerk of the firm in the ordinary course of business, and was read by two other clerks. The plaintiffs brought this action for libel. The defendants contended that there was no publication, and that if there were the occasion was privileged. The learned judge held that there was no publication, that the occasion was privileged, and that there was no evidence of malice. He therefore non-suited the plaintiffs.

LORD ESHER, M. R. Two points were decided by the learned judge: (1) That there had been no publication of the letter which is alleged to be a libel; (2) that if there had been publication, the occasion was privileged. The question whether the letter is or is not a libel is for the jury, if it is capable of being considered an imputation on the character of the plaintiffs. If there is a new trial it will be open to the jury to consider whether there is a libel, and what the damages are: The learned judge withdrew the case from the jury.

The first question is, whether, assuming the letter to contain defamatory matter, there has been a publication of it. What is the meaning of "publication?" The making known the defamatory matter after it has