

payer au demandeur et à son épouse, la rente annuelle et viagère y détaillée ;

“ Considérant qu'aux termes du dit acte il était loisible aux donateurs de vivre à la table du donataire, mais qu'ils n'y étaient pas tenus, et qu'ils pouvaient à la volonté exiger la rente stipulée ;

“ Considérant que d'après les termes de la donation, et suivant la loi, la dite rente était et est payable d'avance, et que les articles réclamés sont devenus dès le jour même que le demandeur les a exigés du défendeur pour l'année à courir du jour de cette demande de paiement, laquelle est prouvée avoir eu lieu le ou vers le 31 décembre 1872 ;

“ Considérant que le défendeur n'a pas établi les allégées de sa défense, et qu'il a été prouvé par le demandeur que la somme de \$51.96 lui était légitimement due par le défendeur lors de l'institution de son action pour les divers articles de rente réclamés, et les considérations allégées en la dite action excepté les deux items suivants : un *pot à lait*, et pour avoir négligé de fournir de l'eau au besoin, lesquels items n'ont pas été prouvés—débouté le défendeur des conclusions de sa défense, et le condamné à payer au demandeur, la dite somme de \$51.96 avec intérêts de la signification de l'action et les dépens, distraits etc.”

Ernest Cimon, proc. du demandeur.

J. A. Gagné, proc. du défendeur.

(c. A.)

COURT OF APPEAL.

LONDON, Dec. 18, 19, 1890.

Before LORD ESHER, M.R., LOPES, L.J., KAY,
L.J.

PULLMAN et al. v. HILL.

Libel — Privilege — Publication to Shorthand-writer.

Motion for new trial.

Action for libel.

The plaintiffs let a hoarding situate upon

certain property which they had sold, but of which possession had not been given to the purchasers, to the defendants, a limited company, carrying on the business of advertising agents. The purchasers having claimed the rent of the hoarding, a correspondence ensued, in the course of which the defendants wrote the letter containing the alleged libel. The letter was dictated by the manager of the defendant company to a shorthand-writer. When written out it was signed by the manager, copied by an office boy, addressed to 'Messrs. Pullman & Co.' at an address where the plaintiffs, with three other persons, were carrying on a business under the style of 'R. & J. Pullman,' delivered at that address, and opened by a clerk of the plaintiffs.

The plaintiffs thereupon brought their action.

At the trial, DAY, J., on the defendants submitting that there was no evidence to go to the jury, held that, the action being against a corporation only capable of acting by its instruments, the shorthand-writer and copying clerk were both reasonable and necessary instruments for the writing of the letter, and therefore the occasion was privileged. There being no evidence of malice, the learned judge withdrew the case from the jury upon this ground, and gave judgment for the defendants.

The plaintiffs applied for a new trial.

Their LORDSHIPS held that there was publication of the libel both to the defendants' shorthand-writer and copying clerk, and also, it being addressed to the plaintiffs in their firm name, to the plaintiffs' clerk; and that, it not being the duty of the defendants to communicate the letter to their clerks, the clerks having no common interest in it, the occasion was not privileged. Further, in the case of a company, the manager must be considered as the principal, and the necessity of its acting by its agents could not be allowed to extend to the communication of libellous matter to its clerks.

Order for new trial.