

SECOND DIVISIONAL COURT.

FEBRUARY 26TH, 1917.

*QUILLINAN v. STUART.

Libel—Publication to Person for Purpose of Copying Letter Containing Defamatory Words—Publication to Employer of Person Defamed—Qualified Privilege—Excess—Malice—Verdict of Jury—Judge's Charge—Misdirection—No Substantial Wrong or Miscarriage—Judicature Act, sec. 28—Damages—Quantum—Question for Jury—Application for New Trial.

Appeal by the defendant from the judgment of SUTHERLAND, J., at the second trial, upon the verdict of a jury, in favour of the plaintiff, for the recovery of \$5,000 damages and costs, in an action for libel.

The verdict at the first trial was for \$15,000. A new trial was directed by a Divisional Court: *Quillinan v. Stuart* (1916), 36 O.L.R. 474, 10 O.W.N. 96, where the facts are stated.

The appeal from the judgment at the second trial was heard by RIDDELL and LENNOX, JJ., FERGUSON, J.A., and ROSE, J.

I. F. Hellmuth, K.C., for the appellant.

Wallace Nesbitt, K.C., and J. M. Godfrey, for the plaintiff, respondent.

LENNOX, J., read a judgment in which he said that the letter which contained the libellous expressions "slut," "carrion," etc., in regard to the plaintiff, a woman, who was the clerk and attorney of Masters, to whom the letter was written and addressed, was in fact published—whether in the legal sense or not—to two persons, namely, Masters and one O'Donnell, who was the accountant in the branch of the bank of which the defendant was agent, and who made a typewritten copy of the defendant's pencil-draft. This copy was the writing sent to the defendant. In the charge of the learned trial Judge, he told the jury that they would be able to find, and would be warranted in finding, "that the communication reached only two people; that is, it was published in the legal sense to two people." This was not a misdirection. The letter was undoubtedly written on a privileged occasion; there was the qualified privilege which exists whenever the writer has an interest or duty, legal or moral, to make the communication complained of to the person to whom it is made, and when this person has also a correlative