APRIL 28TH, 1903.

DIVISIONAL COURT.

PUTERBAUGH v. GOLD MEDAL CO.

Libel—Proof of Publication—Letter Given to Clerk to Copy—Privilege—Amendment—New Trial.

Motion by defendants to set aside verdict and judgment for plaintiff in an action for libel tried before MACMAHON, J., and a jury, and for a new trial, or to dismiss the action. The action was first tried before MEREDITH, C.J., and a jury, but the jury disagreed, and the trial Judge refused a motion by defendants for judgment: 1 O. W. R. 250.

The plaintiff was employed by defendant company, and defendant Abra was acting manager of one of the departments of the company's business. Abra discharged plaintiff for misbehaviour, and was informed a day or two afterwards that plaintiff when leaving had taken away with him certain patterns belonging to the company. Thereupon he drafted a letter to plaintiff demanding their return, pointing out that their removal was a threat, and threatening prosecution if they were not returned. He gave the draft letter to a clerk, who wrote it out on a typewriter and sent it to plaintiff. This was the only publication of the letter.

Defendant company denied that the letter was written with their authority. Defendant Abra pleaded, in effect, that the occasion was privileged, that there was no malice, and that the statements were true.

The motion was heard by STREET and BRITTON, JJ.

F. C. Cooke, for defendants.

J. E. Jones, for plaintiff.

STREET, J.—The occasion of the writing of the letter complained of was a privileged occasion. Abra was in charge of the department in which plaintiff was employed. . . . In writing a letter and demanding a return of the property taken, he was clearly performing a duty he owed to the company, and if the letter were written without malice, no action would lie in respect of it.

My brother MacMahon appears, however, to have ruled that the publication of the letter . . . did not come within the privilege, and took it away, upon the authority of Pullman v. Hill, [1891] 1 Q. B. 524.

The later cases . . . have, however, introduced distinctions which have cut down to narrow limits the effect of that decision; and Boxsius v. Goblet, [1894] 1 Q. B. 842, is authority for the position that the publication by Abra to