

I think there ought to be a new trial.

LOPES, L. J. I also am of opinion that there should be a new trial. The first question is whether there has been any publication of the alleged libel. What is meant by publication? The communication of the defamatory matter to a third person. Here a communication was made by the defendants' managing director to the type-writer. Moreover the letter was directed to the plaintiffs' firm, and was opened by one of their clerks. The sender might have written "Private" outside it, in order to prevent its being opened by a clerk. The defendants placed the letter out of their own control, and took no means to prevent its being opened by the plaintiffs' clerks. In my opinion therefore there was a publication of the letter, not only to the type-writer, but also to the clerks of the plaintiffs' firm. Assuming then that there was publication, the question next arises, whether the occasion was privileged. A confusion is often made between a privileged communication and a privileged occasion. It is for the jury to say whether a communication was privileged; but the question whether an occasion was privileged is for the judge, and that question only arises when there has been publication to a third party. If the judge holds that the occasion was privileged, there is an end of the plaintiffs' case, unless express malice is proved. Was the voluntary placing of the letter in the hands of the type-writer a privileged occasion? The rule, I think, is this—that when the circumstances are such as to cast on the defendant the duty of making the communication to a third party, the occasion is privileged. So again, when he has an interest in making the communication to the third person, and the third person has a corresponding interest in receiving it. It is impossible to say that in the present case either of those doctrines applies. What duty had the defendants to make the communication to the type-writer? What interest had the defendants in making the communication to the type-writer, and what interest had the type-writer in receiving it? Clearly the defendants had neither duty nor interest, nor had the type-writer any interest. Every ground of defence therefore fails. It is said

that our decision will cause great inconvenience in merchants' offices and will work great hardship. It is said that business cannot be carried on, if merchants may not employ their clerks to write letters for them in the ordinary course of business. I think the answer to this is very simple. I have never yet heard that it is in the usual course of a merchant's business to write letters containing defamatory statements. If a merchant has occasion to write such a letter he must write it himself, and make a copy of it himself, or he must take the consequences.

KAY, L. J. It seems to me that this is one of the simplest cases possible, though the ingenuity of counsel has raised difficulties about it. As I understand it, the simple proposition of law is this: If A. writes defamatory matter concerning B., and sends it straight to him, no privilege is needed. But if A. writes to B. defamatory matter concerning C., then he needs privilege to protect him from liability for the libel. In the present case the letter was written to the persons concerning whom the statement was made; but the moment the letter was communicated to another person, that publication would constitute a libel, unless it was protected by some privilege. It is plain that in the present case no such privilege existed. The composer of the letter dictated it to a type-writer, and handed it to a boy to copy. I cannot conceive that there was any privilege between the managing director and the type-writer or the boy. It is said that from the necessity of the case letters written on behalf of a joint-stock company must be written by some agent, and that it is the ordinary course of business to communicate letters so written to another person in order that they may be copied, and by reason of this ordinary course of business it is said that the communication of the letter to the type-writer and to the boy who made the copy was made on a privileged occasion. I have never heard of any authority for such a proposition. The consequence of such an alteration in the law of libel would be this—that any merchant or any solicitor who desired to write a libel concerning any person would be privileged to communicate the libel to any agent he pleased, if it was in the