

SLANDER AND LIBEL.

determinable in those courts are called spiritual causes." *

Defamation appears to have been a spiritual cause. Not only defamatory matter, which is now actionable at law, was actionable in the spiritual court, but that court had jurisdiction over all injurious language, whether verbal or written. Indeed it is hard to see how courts of law could entertain suits for defamation, for such suits could not (as far as we at the present time have the means of judging) be brought within the form of any then known action.

By the statute of the 13th of Edward the First, called the Statute of Westminster the Second, the clerks of the chancery were empowered to form new writs. This statute thus gave a process by which delicts similar to trespasses, but which were not committed with force—as, for instance, slander and libel—could be brought before the common law courts. In the same year was enacted the statute *Circumspecte agatis*, which is commonly regarded by lawyers (though perhaps not by historians) as a statute passed in an endeavor to diminish the jurisdiction of the spiritual courts. According to this statute, "in case of defamation it hath been granted already, that it shall be tried in a spiritual court, when money is not demanded, but a thing done for punishment of sin." The statute defines certain cases in which "the king's prohibition doth not lie" to the ecclesiastical courts. The writ of prohibition was the writ used by the superior courts of common law to restrain other courts from taking jurisdiction of causes over which the court issuing the writ wished itself to take jurisdiction. Several cases are to be found where prohibitions were issued against suits brought in an ecclesiastical court for debt; several are to be found where prohibitions were issued against suits brought in an ecclesiastical court for trespass, and for other causes of action, over which the courts of common law had undoubted jurisdiction.

When these statutes were passed, it had long been the endeavor of the government to restrain and to fix within some bounds the jurisdiction of the ecclesiastical courts; but that endeavor met with a strenuous opposition. The common law courts resorted to prohibitions in cases where the ecclesiastical courts took cognizance of matters which might have been litigated in the common law courts. The ecclesiastical courts on their side wielded, against those who opposed them by suing out such writs, the terrible weapon of excommunication; and it was owing to the use of this weapon against King John by the pope that the barons were enabled to extort from that unhappy monarch the first *Magna Charta*. This struggle was a protracted one.

According to Bracton, it was the rule of the courts, ecclesiastical and civil, that the *acces-*

sorium must come under the same law and jurisdiction as the *principale*; that is, that the jurisdiction over a thing drew to it the jurisdiction over all things accessory. It was by means of this rule that the Court of King's Bench, by the fiction that the defendant was in its custody, and the Court of Exchequer, by the fiction that the plaintiff was indebted to the crown, were enabled to extend their respective jurisdictions over most of the matters originally pertaining exclusively to the Court of Common Pleas. Upon this rule the common law courts appear to have worked in getting from the spiritual courts jurisdiction in matters of defamation; when, after the establishment of actions upon the case, they themselves had the means of determining such classes of injuries.

Before the invention of printing, libels were generally published by scattering the papers containing them in the streets, or by posting them in public places. Such libels were generally against the government, or against persons high in authority; and by the Theodosian code the publication of such libels seems to have been looked upon as an offence akin to treason, and was punished as a high crime. The common law of England appears anciently to have taken the same view of libel, and from the earliest times the publication of a libel has by that law been punished as a crime. Before the invention of printing, libels upon private persons must have been of rare occurrence, though two instances of such libels in the reign of Edward the Third are mentioned by Coke. In each of these cases the libeller was criminally punished. The art of printing was introduced into England in 1474, nearly two hundred years after the introduction of the action upon the case. When the knowledge of reading and writing became common, and the less injurious kinds of private libel came to the attention of the courts, they naturally would be held to be indictable as coming within the definition of the crime sanctioned by precedent; all defamatory matter in writing being libellous, and being indictable upon the criminal side of the court. After the introduction of the action upon the case, the court could consistently give a civil action for damages, both upon the ground that the principal matter—that is to say, the crime—being within its jurisdiction, that fact drew after it a civil remedy in damages as an incident, and also upon the ground that, having by the usual fiction the possession of the criminal's person, it was proper that a civil remedy should be sought against him in the court where he was, rather than that the plaintiff should be sent to the ecclesiastical court for a redress which that court, without the custody of the person of the delinquent, might be powerless to give.

Let us see what actually took place in reference to the statutes of *scandalum magnatum*. In 1275 the first, and in 1378 the second of these statutes was passed. By these statutes, slanders upon great men are made criminal

* Davies Rep. The case of *Præmunire*.