

ROBINS *versus* HILDRELOH.*Easter Term, 1805.*

Action for words: "Thou art a thievish knave, and hast stolen my wood." After verdict for the plaintiff upon "Not guilty" pleaded, and twenty marks damages, it was moved that the action lay not, for the words "thievish knave" will not bear an action, for it is but an adjective to "knave"; and these words, "Thou hast stolen my wood," are not actionable, for stealing of wood may be intended growing wood, and then it is not any felony, and so no cause of action.

But it was afterwards moved again for the plaintiffs that the action was well brought, for the words "Thou hast stolen my wood" shall be intended and be taken in *malam partem*—that he stole wood felled—for it is not wood as long as it is growing. Also by the statute, if one steals wood which is growing, he is to be punished by whipping, for which cause it is a great slander; and therefore, &c. And of that opinion were Fenner and Yelverton, but Popham, Gawdy, and Williams *è contra*, that the action lies not, for although it be said that he is a thief, it being coupled with the words subsequent, which expound it to be no felony, those words will not maintain an action. But if he had said that he was a thief generally, without more, it would have been actionable, and the words, "And thou hast stolen my wood," is all one, as if he had said, "For thou hast stolen my wood," which is not felony, unless it be shewn to be wood felled, no more than if he had said, "Thou hast stolen my apples," which are intended growing, &c., which cannot be felony and then not actionable.