words charge a crime in order to be actionable? To this question a satisfactory answer is wanting.

It is actionable to charge one with having the leprosy, the plague, or the syphilis; but it is not actionable to charge him with having any other disease. Such a charge is said to be actionable because it tends to degrade the person charged in the estimation of the public. A person is not degraded in public estimation by having the leprosy or the plague, but is degraded by having the syphilis. Still it is as disgraceful to have any other venereal disease as to have the syphilis, although a charge of having other venereal diseases is not actionable. In *Bloodworth* v. *Gray*, 8 Scott, N. R. 9, Tindal, C. J., says such words are actionable, "inasmuch as they import a present unfitness to be admitted into society." But this is true of the charge of having the small-pox, or an infectious fever, though such a charge is not actionable.

Again, "words spoken of a man, which scandal him in his profession or function by which he gains his living, will bear an action." To call a merchant a bankrupt is actionable, while to impute to him all the moral vices (if they are not imputed to him in the conduct of his business) is not actionable. And, lastly, opprobrious words spoken of one become actionable if they produce a special damage. In these two instances the law comes squarely down to a pecuniary test of liability. An exclusive consideration of these two instances has sometimes led judges to declare that pecuniary loss is in all cases the gist of the action. But it must be borne in mind that in the case of words actionable *per se*, it is not open to the defendant to prove that the speaking was followed by no pecuniary loss; and moreover such words would be actionable, even if it could be proved that they were followed by a pecuniary benefit. At other times it is said that pecuniary loss was originally the gist of the action, and that the law has been extended by a fiction to embrace opprobrious words in other cases where there has really been no pecuniary loss; that is to say, to give redress the court feigned that there must necessarily have been a pecuniary loss. Unfortunately for this explanation, the progress of the law appears to have been in a contrary direction. The earlier cases proceed upon the ground that a man's honorable reputation is the thing which is dearest to him. The three earliest reported cases—one in the year 1463, and two in the year 1476—are for calling the plaintiff a villain, in the feudal sense of the word; that is, for an imputation that he was base-born, and had not the rights of a freeman. Of the five next following cases, one is for calling the plaintiff a heretic, one for accusing him of perjury, and the other three are each for calling the plaintiff a thief. These eight cases are all the reported cases down to the year 1539, and in none of them is pecuniary loss the gist of the action.

It is said that to constitute slander, the speaking of the words must be with malice. Malice, if it be the name of anything, is the name of a motive—the motive of malevolence or ill-will. Words spoken without ill-will, from mere thoughtlessness, may be actionable; but in such case it is said the law implies the malice from the act of speaking, and will not admit evidence to the contrary. Hence this kind of malice which the law is said to imply is called legal malice, as differing from malevolence, which is called malice in fact; and legal malice is said to consist in speaking defamatory matter without legal excuse, because when words are thus spoken the law implies malice. Why is it not as simple to say the speaking defamatory matter without legal excuse is actionable, as it is to say defamatory matter to be actionable must be malicious, but the law implies the malice? What need is there of bringing into the law of slander the cumbrous machinery of malice for the sole purpose of necessitating the construction of other machinery—the machinery of legal implication—to take it out again? If legal malice means the want of legal excuse, which appears to be the most approved definition of it, then it means so much that it means nothing, for in that sense every act which is the groundwork of an action is malicious. In other words, malice is an ingredient of every action at law as much as it is of slander; and it is because money is maliciously retained, that is, that it is retained without legal excuse, that the plaintiff can maintain assumpsit. How came this doctrine of implied malice to be brought into a portion of the law where it has no meaning?

As the English law upon this subject was never constructed upon a plan, it cannot be resolved into one. It is a mass which has grown by aggregation, and special and peculiar circumstances have, from time to time, shaped its varying surfaces and angles. Undoubtedly the crooked and wrenched form of the law of slander and libel can be accounted for, but it must be accounted for in the way we account for the distorted shape of a tree—by looking for the special circumstances under which it has grown, and the forces to which it has been exposed. This branch of the law, like the greater portion of the English common law, is of Roman origin. Born of the Roman, and nurtured by the canon law, its distorted person evidences the violence with which it was torn from its nurse.

Before the Roman conquest, the Britons were governed by their Druids, who possessed whatever there was of civil and of criminal jurisdiction. Whether at that time there was anything worthy of the name of law, may be doubted. After the conquest, during a period of more than three centuries, Britain acquired and kept "the elegant and servile form of a Roman province." The inhabitants became Roman Britons. The emperors Hadrian, Constantius, Constantine, Maximus and Carausius at various times were there, and were severally