SELECTIONS.

SLANDER AND LIBEL.*

A distinguished writer upon jurisprudence has said, "I will venture to affirm, that no other body of law, obtaining in a civilized community, has so little of consistency and symmetry as our own. Hence its enormous bulk, and (what is infinitely worse than its mere bulk) the utter impossibility of conceiving it with distinctness and precision. If you would know the English law, you must know all the details which make up the mess. For it has none of those large coherent principles which are a sure index to details; and, since details are infinite, it is manifest that no man, let his industry be what it may, can compass the whole system. Consequently, the knowledge of an English lawyer is nothing but a beggarly account of scraps and fragments. His memory may be stored with numerous particulars; but of the law as a whole, and of the mutual relations of its parts, he has not a conception." †

The law of slander and libel is beset with questions of a perplexing character. It seems to have no general principle for its foundation. Although from the time of the year-books to the present the reports abound with cases upon this branch of the law, and although text-book after text-book has been written upon the subject, the questions remain as perplexing as ever. There is no simple and general rule for determining what words will and what will not support an action. While a suit can be brought for any defamatory written words, only certain classes of defamatory spoken words are actionable. Again, while written defamation is punished by indictment, redress for spoken words is given only by a civil action. No entirely satisfactory reason has ever been given for the existence of these distinctions between the law of libel and the law of slander. The reason usually given is, that written defamation has a more extended circulation than spoken words. This would seem to imply (inasmuch as the grossest slander is not, while the most trivial libel is, indictable) that the injury done to the person defamed is rather in proportion to the extent over which the defamatory matter is spread, than to the gravity of the charge itself. But the greater part of the injury done by defamation is comprised within the narrow circle of one's associates and acquaintances. The defamation of an unknown person is as void of effect as the defamation of a fictitious person would be. Within the circle to which defamation extends—and in regard to a common person that circle is more readily reached by speech than by writing—the extent of the injury done depends upon the nature of the charge made. Generally, more harm is done to character by whispered than by outspoken malice. It is the baneful effect of slander, and not of libel, which is depicted by the poet and the novelist. Again, a public denunciation by word of mouth may surely have a wider circulation than an insinuation in a confidential letter sent by post. Another reason given for the distinction is, that the tendency of libel to a breach of the peace is more direct than the tendency of slander. But this is questionable. The tongue, in matters not of government concern, has caused more bloodshed than the pen ever did. Neither can the distinction rest upon ethical grounds. A woman's chastity or a man's integrity may be called in question by word of mouth, and the law is wholly silent; but printed ridicule of the set of her dress, or the carriage of his person, lays the groundwork not only for vindictive damages, but for setting in motion the criminal law against the offender.

Certain classes only of spoken defamatory words are actionable. Why are those particular classes singled out as actionable, while other words, equally defamatory, not embraced within them, will not support an action? Oral language is, with some slight limitation, actionable *per se* when it charges an indictable offence. To charge one with such an offence tends to degrade him in the estimation of his fellows, and often to expose him to the peril of a public prosecution. Is it the degradation to which the slandered person is subjected, or is it the peril to which he is exposed, or is it both of these things together, which furnish the ground of action? Baron Parke, in *Heming* v. *Power*, 10 M. & W. 564, says, "The ground of the matter being actionable is, that a charge is made which, if it were true, would endanger the plaintiff in point of law." But it is actionable to charge the plaintiff with having committed a crime, and having been already punished for it; for example, to say that he is a returned convict. Yet by such an accusation the plaintiff is not endangered in point of law. Is it the social degradation to which the plaintiff is exposed which constitutes the ground of action? To call one a rogue, a rascal, a cheat and a swindler, is to expose him to social degradation; but it is said that such an accusation is not actionable, because it does not "endanger the plaintiff in point of law." In Alabama it has been held (*Coburn* v. *Harwood*, Minor, 93), that to charge one with the commission of a crime against nature is not actionable, because such a thing is not indictable at common law, and was not in that State a statutory offence. Sometimes it is said that the social degradation is the gravamen of the action, and that the charge of the crime is the test by which to determine whether the words are actionable. This amounts only to saying that words which tend to degrade one are actionable when they charge a crime; which is returning to the starting point, instead of giving a reason. Why must such

* A Treatise on the Wrongs called Slander and Libel, and the Remedy by Civil Action for those Wrongs. By John Townsend. Second Edition. New York: Baker, Voorhis & Co. 1872.

† Austin's Jurisprudence, Lec. xxiv.