

SLANDER AND LIBEL.

The following are specimens of such cases: "Skinner, a merchant of London, said of Manwood, Chief Baron, that he was a corrupt judge; adjudged, the words were actionable." "Stuckly, a justice of the peace, brought an action for these words: 'Mr. Stuckly covereth and hideth felonies, and is not worthy to be a justice of the peace.' Adjudged the action would lie, because it is against his oath, and the office of a justice of the peace, and good cause to put him out of commission, and for this he may be indicted and fined." "Cotton, justice of the peace, brought an action against Morgan for these words: 'He hath received money of a thief that was apprehended and brought before him for stealing of certain sheep, to let him escape, and to keep him from the gaol.' Adjudged the action would lie."

The growth of the law upon this point is shown by this case, decided Mich. 4 Jac.: "Carre brought an action against Rande for words, and declared that he was steward to divers great lords of their court-barons, and of the leets within their manors, and that he was steward of one A. of his court-baron, and of the leet within his manor. The defendant, of this not ignorant, said these words: 'Mr. Carre hath put a presentment into the jurors' verdict against me for 3s. 4d. for suing of Peter West forth of the court, contrary, &c., without the consent of the jury.' By the whole court, the action lies, because he doth accuse him of falsity in his office; but by the better opinion, if he had not alleged in his count that he was steward, the action would have lain."* The following case, quoted from March † (Pasch. 17 Car.), shows that at that time the rule was not well settled. "Sir Richard Greenfield brought an action against Furnace for these words: 'Thou (*inuendo* Captain Greenfield) hast received money of the king to buy new saddles, and hast cozened the king, and bought old saddles for the troopers.' It was objected that the action would not lie; and it was likened to these cases which I will cite, because they are worth the knowing: 8 Car., The Major of Tiverton's case. One said of him that the Major had cozened all his brethren, &c. Adjudged not actionable. 9 Jac., in the King's Bench: The overseer of the poor hath cozened the poor of all their bread. This was likewise said to be adjudged not actionable; but I do somewhat doubt of this case, because the words do scandal the plaintiff in his office of overseer; but to this it may be said, that this is an office of burden and trouble, and not of profit. 26 of the Queen, in the King's Bench, Kerby and Walter's case: Thou art a false knave, and hast cozened my two kinsmen; adjudged the words were not actionable. 18 of the Queen, in the King's Bench: Serjeant Fenner hath cozened me and all my kindred; adjudged the words would not bear an action. Out of which case we may, by the way, observe this

for law: that if a man say of another (without any precedent communication of his office, place of trust, or profession), that he is a cozening or a cheating knave, or that he hath cozened any man thus and thus, that no action will lie for such words generally spoken; otherwise if they be spoken in reference to a man's office, place of trust, or profession. And in the principal case, it was resolved by Heath, Justice, and Bramson, Chief Justice (the other Justices being absent), that the action would lie, because the words did scandal him in his place of trust, and they said it was not material what employment the plaintiff had under the king, if by the speaking of these words he might be in danger of losing his trust or employment."

There also is an early class of cases, in which the plaintiff was an attorney. But an attorney is an officer of the court, and words spoken of an attorney in his conduct in the office of an attorney, touch the administration of justice as nearly as words spoken of a judge. To call a merchant a bankrupt was to subject him to the statutes of bankruptcy, and was held actionable upon the same principle that the accusation of a crime was actionable. That pecuniary loss was the gist of the action, or that damage to a man's business would of itself furnish a ground of action in a temporal court, appears to be an idea which originated after the Reformation, when ecclesiastical courts had lost nearly all power, and had fallen into general contempt among the people. It is founded upon the idea that every thing relating to money or business is temporal, as pertaining to the matters of this world. The ecclesiastical courts, however, retained their jurisdiction over things connected with marriage, marriage having been made by the Church a sacrament, and over matters connected with testament, from the association in the mind between religion and preparation for death. There is much evidence to show that prior to the Reformation the spiritual courts were very unpopular with the people, and an inspection of the ecclesiastical proceedings in criminal causes from the year 1475 to 1640† makes one wonder at a state of society in which such courts could exist. Suitors, it is to be presumed, seldom resorted to them when they could obtain redress elsewhere. It is plain that those courts had two main guiding principles—one to protect the clerks, and the other to plunder the laity.

If this account of the origin of the common law jurisdiction in matters of slander and libel is correct, it furnishes a reason for the slight mention of slander and libel to be found in the early books, and for the rapid increase of such actions after the Reformation; which led to the complaint that the intemperance and malice of men's tongues had wonderfully increased; whereas the fact was only that the intemper-

* March on Slander, p. 51.

† Ib. p. 53.

‡ Hale,