

SLANDER AND LIBEL.

offences. It is enacted by the second of these (2 Ric. 2 st. I. c. 5), that "none shall devise or speak false news, lies, or other such false things of the prelates, dukes, earls, barons, and other nobles or great men of the realm," &c., upon pain of imprisonment. Under these statutes the courts gave a civil remedy coextensive with the criminal one, and the "great men of the realm," though not the common people (because the common people are not within the statute), can maintain actions for slander for any spoken defamation without alleging special damage; although the words spoken do not impute a crime or a specific disease, and although they are not spoken of the plaintiff in reference to his trade or occupation. In other words, as to great men of the realm, there is no distinction between slander and libel in respect to what words will support an action, oral and written defamation of such men being alike indictable.

Spoken words which impute an indictable crime are actionable. A court of law having jurisdiction of the offence charged, and it being the business and the duty of that court to investigate charges of crime for the purpose of punishing the offender, this jurisdiction might well be held to draw after it as an incident the right to investigate the charge, for the purpose of compensating the party injured by such a charge if it were false. But to give this jurisdiction, the imputation must be direct: a crime must be charged.

One might suffer as much pecuniary damage and as much loss of character from being called a thievish knave as from being called a thief. But to call one a thievish knave imputes a disposition to commit crime, and not a crime committed; and as there is nothing to which the jurisdiction of the court can attach, such an accusation is not actionable, while to call one a thief is a direct charge of crime, and is actionable. In the first case supposed, the person defamed would be left to his redress in the ecclesiastical courts; but in the second case, if the person defamed should seek redress in those courts, a court of common law might issue a writ of prohibition.

The fact that it is actionable to impute to one the present having of the leprosy, syphilis, or plague, while it is not actionable to impute the having of any other disease, and not actionable to impute the having had even those particular diseases, may probably be accounted for in the same manner. "When a person became affected with the leprosy, he was considered as legally and politically dead, and lost the privileges belonging to his right of citizenship. The church took the same view; and on the day on which he was separated from his fellow-creatures, and consigned for the remainder of life to a lazaret-house, they performed over and around the yet living sufferer the various solemn ceremonies for the dead, and the priest terminated the long and fearful formula of his separation from his fellow-creatures by throwing upon the body of

the poor outcast a shovelful of earth, in imitation of the closure of the grave."* The form of the writ *de leproso amovendo* was as follows: "The king, to the sheriff, &c., or to the mayor and sheriffs of London, greeting. Because we have received information that I. of N. is a leper, and is commonly conversant amongst the men of the city aforesaid, and hath communication with them as well in public as in private places; and refuses to remove himself to a solitary place, as the custom is, and as he ought to do, to the great damage and manifest peril of the men aforesaid, by reason of the contagion of the disease aforesaid; we, being willing to take precaution against such danger, as to us appertains, and which is just and hath been used to be done touching the premises, command you, that, taking with you certain discreet and lawful men of the city aforesaid, not suspected, who have the best knowledge of the person of the said I. of N., and of such disease, you go to him the said I., and cause him to be seen and diligently examined in the presence of the said men; and if you find him to be a leper, as before is said, then without delay, in the best manner you can, cause him to be carried away and removed from the communication of the said men to a solitary place, to dwell there, as the custom is, lest, by such his common conversation, damage or peril should in any wise happen to the said men. Witness," &c. As the leper was subject to this writ, the accusation of leprosy as well as the accusation of a crime might be held actionable, and upon the same ground. Persons suspected of having the plague were likewise by law removed to pest-houses and confined, so that the accusation of having this disease rests upon the same basis as the accusation of having the leprosy. To account for a charge of having the syphilis being actionable is more difficult. That disease was not known till the end of the fifteenth century. Whether upon its first appearance it was regarded as contagious, and so exposed the sufferer to a writ like the writ *de leproso amovendo*, or to any other legal form of removal and confinement, or whether the disease itself was so like in its outward manifestations to the appearance of that form of leprosy prevalent in England (which, from the best description given of the two diseases, appears to have been a fact), is a matter of conjecture. It was a disease very prevalent among the clergy, and there is abundance of evidence to show that the having it was considered no more disgraceful, at any rate to a man, than the having any other severe disorder.

Defamatory words spoken of a man, which touch him in his office or the means by which he gains his livelihood, are actionable. The earlier cases appear all to relate directly to the administration of justice. To bring such slanders as these within the jurisdiction of the common-law courts would not be difficult.

* Encyclopædia Britannica.