Sect. July 1794.

Slander.

Plantf. in Declaration must state.

Words were False

2. Malicious

3. Spoken before divers Citizens

"He is a perjured rascal"; in this case, must state that they were spoken in a conversation concerning the Plantf. and go on to say, that Deft. said, that, "he, (meaning the Plantf.) is a perjured rascal. — Care must be taken about inserting this innuendo.

4 Coke 28.

Next State Damage.

"By ~~[illegible]~~ of the All which Slanderous discours was to the dam

Friends forsook – This General.

Special.

Must go on and tell the story

Speaking against a man in his business, must aver that the man was in such business

— Must use the Pres. Tens.

Speaking against a magistrate must aver that was spoken of the man concerning his office.

Libel – must state that was published – or something equivalent

Defendant.

Demur – Say the Plaint. Dec. is insufficient in Law.

Sat 19th July 29 1794.

Trover.

Rule I.

Trover lies when a man has the possession of another's goods by wrong.

Except.

Not lies for invading any real property or personal unless it be goods.

Rule II

Lies tho the goods have been restored back, for the Damages and the retention of goods given in mitigation of damages

Rule

Lies when a man has got goods rightfully, if he after sell it without order of owner, as in

case of goods found — or hired, or borrowed and sold — or Bailment exceeded. — — — — — — —

Rule

Lies when a man gets hold of another's property rightfully and does not use it, but will not restore it to the owner, when he ought to return it.

Sub-Rule

In the last rule above, Plaintiff must prove an actual demand of the goods — But in the two first cases need not be demanded

1st Ind. 264 Cro. Eliz 495.

Rule

To support this action must be property in the Plaintiff — This property of peculiar kind — as if

I find a boom on my lot. to day a
This finding gives me sufficient prop
1st H. 5 03.

Rule II

Must have been over a possession on the Defendant.

Rule III

Must have been conversion by Deft. –

1st Case – The tortious taking is the Conversion

2d Case – The Tortious use is the Conversion

3d Case – The Tortious keeping is the Conversion.

Except.

Unless the Defendant had a right to refuse the delivery of the goods.

Deft. may deny if he has a lien on the property

Deft. may Deny if he is doubtful whether the property belonged to Plaintiff

1st Bur. 423 — 2 R. 722.

Trespass vi et armis & Trover

are concurrent in all taking Tortious — But if there be only a tort on the prop. and no taking Trespass only lies.

II

Trespass — Trover — Theft.

III

Concurrent, ~~Felony~~ — Theft —

Trespass Trover — Indebitatus.

I

Sale of an article where Defendant came by it ~~rightfully~~ – Trover – Indebitatus. –

II

Exceeding of Bailment – Trover – Special action on case for damages.

III

Deft. retains after demand retains pro: which he ~~rightfully~~ got rid of – Trover only – lies –

General Property Man & Special Property Man – or Bailor and Bailee – of this respective right to bring this action They are as Lessor & Lessee.

Either may bring – If Bailee bring he recovers value of thing

and his own damages — But if Baylor brings, he recovers only value — and Bailee may still have action on case for his special Dam.

1 — ev. 282. — 1st Mod. 31.

If Bailee bring — he is accountable to baylor for value.

Bailee can not maintain trover against Baylor — But case — for Damages.

If trovered goods have passed thro many hands, yet if none of them have acquired a property — Trover lies against any of them — as horse sold by thief and sold again.

But if thief sell, and it be after sold by thief at fair — or in Market overt, this purchaser gets fair

and Trover does not lie.

The Action of Trover vests the Prop. in Deft. after judgment only when the property had been returned to the Plaintiff — This Judgment vests in Deft. or his assignee

3d. Wil. 146 shows to what lengths the action of Trover will lie. — when no conversion, and could not bring to Deft.

Again lies where there has been a partial conversion, tending to an injury of the whole — as to take 6 gal. of rum out of a Hogshead and put in 6 of Water — Trover lies for the whole. — But to fill the cask up and not take Strang. 576. any out is not — Querie.

Pr. W. 328. – May sue Servant tho
by his master's direction and in his
business he did the act – Sue both
at election – If servant acted out
of master's business and without
his command – action lies only
against the the Servant.

Dorr. 658. – Cow. 445 – Case
of Fore Tenantin Common whilst
tenancy holds can not bring, but
(C. T. Z. A. 200) as soon as dissolved
in tenancy, the action may be had
(Cow. 375) Trover not to be brought
against the executor for the tort
of the Testator, – But Act. for
detinetus Assumpsit lies.

Trover does not lie against
the Common Carrier of the

goods were taken from him by Thieves &c. ~~for which taking~~
Sal. 66-5 – 5th Bur. 2832.

Lat. 60th July 30. 1794.

Strang. 142 – 2 Bl. R. 902.

Replevy.

2 kinds in England – 2 in Connecticut.
1. In Eng. Lessor may distrain by Warrant – Replevy given to Lessee
This Unknown in this Country.
2d – Kind In Eng. when Beasts were Taken Damage feasant – This we have in common.
We have one when goods are at-

tached to replevy the goods attached

In this replevy - owner must get bondsmen to give security that the goods shall be returned or the money paid - or else either of them.

Rule I.

Case goes to Court and is tried on the Replevy and if the plaintiff in replevy owe nothing he will be liberated with costs, and if the court find that such plaintiff do owe, the court renders judgment in favor of the Deft. against the plantiff and the bond given is the security if the plantiff fail.

Deft. in Replevy may get the damages prised and if fairly ~~taken~~ prised, this is the rule of damages

If any cattle but commonable get into my lot I may have damages, tho my fence be ever so poor –

Neat Cattle – Commonable

Horses – – – Not

Hogs – may be By-Laws { With By-L. are Comm. / Without are not common

Replevy when goods are Attached. – Is only getting bondman and taking back the goods & the Bond comes in lieu of the goods – Judgment goes against the Original Deft. and if he do not pay, the replevy Bond is sued and a judgment on that issues.

Extent of liability of Bondsman.

I have Debt £100 – I attach £30 worth of goods – they are replevied by B and I recover against my Debt £100 – may I recover the £100 on the bond of B.? – Or only £30 and cost.? – Querie – Stat. makes a Deffiulty.

Replevin exists only ~~only~~ between the parties. – I attach A's goods for B's debt – A may have trespass against Sheriff

Bailment Constitut Law.

0 48

No Same.

5d. Same.

5e. Same.

5f. Same.

5-4. The pawnor may redeem in equity at any time during his life and his executor after him if the time of redemption has not arrived at the time of his death.

5-5. Whether a pawn is assignable so as to make a tender necessary to the assignee is a doubtful case, there being contradictory authorities.

5-6. The pawnee, when the time of redemption has elapsed, may sell the pawn to pay the whole due. He must however act reasonably & get as much as he can & be accountable in equity for the surplus more than his debt.

5-7. Whenever there is an injury done to the thing bailed, or it is trodden by a third person, the bailor is entitled to an action in respect of his property & the bailee in respect of his possession & liability to the bailor. When the bailee sues, he recovers not only the value of the thing bailed, but also his own damages. But when the bailor sues he recovers only the value. If the

Except. 1st.

Hob. 260 - 266. If the Plaintiff in original suit knew that he had not cause of Action

But, - When such Plaintiff only thought it probable he had no suit, action not lies.

Except. 2d.

Action may lie, tho there was cause of the original suit, - if it be vexatiously prosecuted, as to attach 500 £ for a Debt of 3 £.

1st Sid 424 - 1st Saun 228

Except. 3d.

If the original suit be brought before a court that has

3d Wil. 302) no cognizance and the original Plaint. knew of it.

Excep. 4th.

If original Plaintiff by fraud got a judgment (1st Ver. 76) against original Deft. the Action lies.

Excep. 5th.

When original plaintiff sued in a neighbour's name without orders. — But to make an action lie here, Mr. Reeve thinks that the suit must be brought maliciously or managed cruelly. Sed Querie. — tho Mr. Reeve say so. it has been determined by our Courts.

General Issue - Not guilty.
2. denies that words were spoken

Justification. Must be specially
3. plead in England.
admits the words were spoken but were true and goes on to state how they were true.

Special when the Plaintiff for what he said, (Crok. Jac. 91.) was a counsellor, - and there may be slander words, false, and spoken and yet may justify

(11. 120) Eng. Law.
(Man may prove certain things laid not laid in the Declaration.)

Recovery is a complete justification or rather Bar to all future actions for the same Defense and in Trespass

must go on and state the antecedent record either literally or in substance.

Accord & Satisfaction is a Bar. must be actually paid and received — Plead that it was agreed — was paid — was received. 2-Lev 96.

6 — Stat Limitations. 3 years in our law — 2 in England.

Has been determined in Eng. that this stat. does not extend to actions for special Damage —
Reasonable time — time Law

Words actionable in themselves, must be action brought within the Stat.

Release is a 7th Bar — This always must be plead specially

by our law and all other things may be given in ~~proof~~ evidence under the general Issue — Contrary to plead recovery specially

Award 8th Bar. — must plead that award was made by agreement, and that Plaintiff has complied with his part.

In Declaration may state all the Defendant has said within the stat. of limitation — but if there be two sets of, one actionable — one not and a general verdict, verdict is bad. — title two sets of words in one phrase, as "He is a thief & a liar, and a general verdict, it is good.
Coroth. Onslow vs Horne.

1st Cok. 130.

May demur as to part of Declaration and plead General Issue as to remainder.

Declaration demurable – not demurred to, but Gen. Issue – and verdict by Jury for Damages, such Verdict may be set aside by the insufficiency of the Declaration.

Sect. 48th July 28th 1794

Action on Case for Malicious Civil Suit.

Gen. Rule. Is (Sal. 13) that no action lies when a Plaintiff happens to fail in the Original Case

Sept. 44th July 1794.

Words Actionable

Rule, To know when words are actionable.

Are actionable when the crime alledged is punishable by the laws of the state, whether any damage ensue or not.

If the slanderous words, being true, would subject the person against whom spoken to punishment above a fine, then words are actionable — and this rule.

Rule 2.

Any words spoken, which directly affect a man's business are actionable in themselves.

Rule III.

Words spoken to a man prejudice, immediately respecting his office are actionable.

Rule IIII

Any aspersion, that a man has a disease that would banish him from society, is actionable.

Rule V.

In order to Damages, mulcing in the declaration for Words, False & Malicious, ~~and~~ and they must be made out. But the court will presume them

and the Defendant may re-
butt.

Malice.

Defined, not spite, but any
unfavorable mind, or
carelessness of the repu-
tation of others.

Exception of Charge of Trespass. Sometimes actionable
Sometimes not.

Rule

When the Trespass alledged subjects to a fine and also ~~man~~
~~of~~ manifestly disgraces the
character, the charge of a
trespass is actionable.

Rule II.

But if the trespass subjects to fine and reflections directly on character, are not actionable.

Sect.

But action of Slander lies for spiritual damages, for slanderous words, whether they be words actionable or not

Query, must it be settled that there was malice, as well as falsehood? — only the last neglect says Mr. Brown —

— Sub. judice. —

Heat, anger, passion,
may be proved to mitigate
damages, if there was reason
on of the passion
to increase
damages if there was not
reason of the passion

Of words actionable, let them
be spoken, as they will, as
to manner, yet if taken
upon the whole, they im
ply an act done, they
are actionable.

Nel. 18 - 2 - 2 Wil 300. 4th Cok.
18 - St. St. 142

But if they only indicate inclination and not action not actionable.

Lat. 45 - July 25th 1794

In murder, must be malice prepense - else Manslaughter.

Slander, by hinting, slanting speaking adjectly. - While Take the whole conversation together, and if it amounts to a declaration of something done - Slander lies -

But if the conversation only indicate an intention, or inclination, to action that is bad, so as to subject to punishment above a fine, in such a case, action lies

Men in Office.

Conversation respecting them directly in connection with their office, may be libel whilst about Men, not libel.

1st St. 617. not reconcilable

3d Wil. 177 Important

Special Damages.

Some accounts seem to favor the idea, that there may be actions of slander for probable pecuniary damages - Sed Quere.

Heresy

Slander for saying the Revd. Mr. B. - ~~for~~ preaching Heresy - Courts - will call the religion of the sect. of the Calvinistic Orthodox, and if he leave that, he is a legal Heretic.

Sal. 694.

4 Cok. 17. Bastard called - Actionable.

For bringing an Action at Law, or any pleadings consequent, yet no action of Slander lies, — But if a man unnecessarily bring in any thing into the declaration, pleadings, the Action lies.

Crok. Eliz. 230.

No joint Slander.

Slanderous words to be construed not severely nor mildly, but as commonly understood.

Slander not criminal in Eng. — But our Stat. allows an action of Lui Jam.

Libels.

Written, and any thing written
that (Pop. 139. Nol. 2 Ld. 2.
Wil 403.) is actionable by pa
(2d Bur. 908) rule, is actionable
Z. A. to A. advising that his dog
bar was with child and was gone
away to be delivered — A had
action.

Rule.

Mr. Reeve thinks, that if the
Libel be an insult and wrong
the failings action lies. Query

Libel is a crime and the
party may have his action.
but proof of the guilt of
the thing charged, cuts off
the damages of the party

Jailor may whip his Prisoner.

This is understood with great restriction.

Man may whip his Wife — Old rule — not standing now for wife may get her husband bound to his good behavior.

A Friend whips a Crazy person approved, if done to restrain.

Battery may be done to prevent mischief — Caution.

Man may Batter in Self defense — Need not wait for another to strike — if attempts repel — but batter in self defense with prudence only as far as necessary.

Goods — if any one take my goods out of my possession while he is in ~~they~~ ~~[illegible]~~ may bat-

with prudence and as necessary. —

On fresh pursuit of a man's taking my goods I may batter Queere de hoc?

But if it be not a fresh pursuit of the goods, not batter - Queere?

May Batter to prevent forcible entry into your house - but if actually in peaceably possession, must take remedy at law

Also to keep person out of my house - or turn him out if it be the house I live in.

Parents in favor of their Children Children in favor of their Parents and Servants in favor of Masters are justifiable.

But this must be when the original was himself justifiable — Or provided the original was not beyond the bounds of moderation.

Master in favor of his Servant.
Doubtful in this last case.

All these kinds of defense pleadable under the general issue in our law — special

But the public may still have action and fine, tho the defendant prove that his 5th Cok. Pub. charge is true.

Person dead is libeled, public may have their action and fine.

Cowp. 672. Slander against government.

2 H. 783.

Lord Mansfield has determined that the Jury have only to determine the matter of fact, as, did the printer print it, or the writer write it, if he did, bring in guilty – if he did not, not guilty, and then let the court dismiss the Defendant if the matter of accusement is not a libel – if it be libel, then the court not dismiss. – Lord Mansfield's plan greatly blamed, but this was not, says Mr. Reeve, his own, but only the old law strict by. to wit Jury, Fact find.
Court Law. find.

Defense.

3 — 1. — Demurr to Declaration when it will do to own and say that it is not claimed

— 2. — Special Plea in Bar to action, in Eng. in case defendant justify and say that, Plaintiff did the thing averred.

But — under our law, may plead general Issue and justify as in third defense, and this in all cases, except some thing be done by plaintiff himself.

— 3d — General Issue, Not guilty.

Under this in Con. may prove any thing but some affirmative defense as Release &c. and this must be plead specially.

Rule II.

If there was no cause for the original suit, lies, but if probable cause, not lies.

Acquittal of the Deft. in orig. suit is prima facie evidence that there was no cause for original suit –

But Plaint. in orig. suit may still show, there was probable cause,

And he shows it, when he, (1st Wil 232 – 1st Burr. 493 shows any intermediate circumstance, as binding over of Justice – But Deft. in Orig

sent may rebutt even this
all this shows need
of Malice

Rule

Damages are aggregate if
the Offence would subject to
fine,

R. Thorp 9 Ch. Doug. 205.

Damages

Testimony.

Singular, that the Plantiff
when called to make out prob-
able cause in original suit, is
allowed to testify himself that
the crime, as the theft, was done.

Deft. Plea.

Justify - State that the fact was done —

that he found the Plantiff so and so.

Crok Eliz. 34

Black R. 1st Vol. 385.

Justification is want of Malice or a probable Cause and the whole of these in all ramifications may be proved.

H. 79 - H. 910.

A justice binds over when there is no offence whatever, in this case, the Binding is no Shelter.

Rule

tction of vexatious suit
an not be brought till there
s an end of the original suit.

Rule 11

In order to entitle a man to
this action, he must have
sustained some actual dam-
age, but the least Dam-
ages is enough to entitle,
and the actual Damage
sustained is not absolutely for
the rule of Damages by the
jury.

Question

Can A, a citizen of Connecti-
cut send an obligation of Debt
against B another Citizen of

Con. to N. York with orders to a lawyer to arrest B the first time that comes there for the purpose of Distressing said B.

Mal. Civil suit – 1 Stat. gives threeth damages – may have action at common law

4th Bur. 1794 – 1st Dam. 544

Action for Public Prosecution, –

Rule

In order to an action on this suit there must be malice in the original Plaintiff.

Bailment Connecticut Law

5-4. I apprehend taking away the right of redemption on the death of the pawnor has not been recognized by our courts.

5-5. also doubtful here.

5-6. same.

5-7. same.

Bailee has sued and recovered, the bailor cannot afterwards have his action against the trespasser, but must look to the bailee. If the bailor has sued & recovered the value, still the bailee can have an action for his own particular damage.

5. Property may be so left in the hands of the Bailee, that it will be answerable for his debts, or if a purchaser buys it of him, he will be secure in his title. This is when the nature of it is such, that in the original terms of the bailment, or it calculated to deceive creditors or purchasers:- not meaning it is possible they may be deceived; but when it is the natural & probable consequence of such bailment.