

Case No. 12,173.

RUTHERFORD v. MOORE.

{1 Cranch, C. C. 388.}¹

Circuit Court, District of Columbia. Dec. Term, 1806.

SLANDER—ACTIONABLE WORDS—AVERMENTS.

1. Actionable words spoken in the second person, will not support an averment of words spoken in the third person.

{Followed in *Birch v. Simms*, Case No. 1,427.}

2. The words “He gets his living by thieving,” are actionable.

F. S. Key, moved for a new trial because the Court had admitted improper evidence; and in arrest of judgment because the words are not actionable. The words were, “He gets his living by thieving.” It must be a specific charge of some crime or misdemeanor liable to punishment. A thief-catcher, an officer of justice, or a judge who gets fees, may be said to get his living by thieving; and he cited *Onslow v. Home*, 3 Wils. 186; *Holt v. Scholefield*, 6 Term R. 691; *Dawes v. Bolton*, Cro. Eliz. 888; *Baker v. Pierce*. *Ld. Raym.* 959; and *King v. Aylett*, 1 Term R. 70.

Mr. Law, *contra*. The doctrine of *mitiori sensu* is obsolete; the modern rule is that words shall be taken according to their common understanding and meaning. *Beavor v. Hides*, 2 Wils. 300.

The errors in arrest of judgment, were overruled. The motion for new trial was on the ground that the court erred in suffering words spoken in the second person, “you,” &c., to 96 be given in evidence in support of the allegation that the defendant said “He gets,” &c.; and Mr. Key cited *Esp. N. P.* 521. Mr. Law, *contra*, cited *Rex v. Pocock*, *Strange*, 1157.

THE COURT granted a new trial on the ground of admitting the improper evidence.

Mr. Law, for plaintiff, moved to amend; which was allowed on payment of the costs of this term, except the jury fee.

[See Case No. 12,174.]

¹ [Reported by Hon. William Cranch, Chief Judge.]

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