

HARRIS vs. BURLEY.

If words are actionable by reason of their reference to some matter not sufficiently appearing in the language used, such matter must be introduced into the declaration by way of averment, or recital; and cannot be inserted by way of innuendo, the office of which is merely to explain what goes before.

But it is necessary to aver only so much as will serve to explain the meaning of the words used, and show the imputation intended to be made by the defendant.

CASE for slanderous words. The declaration contained the usual averments, and alleged that the plaintiff, at the time when, &c., was, and had been a trader, and had exercised and carried on, and did still exercise and carry on, the business of a country trader, and vender of goods, wares, and merchandize, &c.; that he had always maintained himself by honest, industrious attention to his business and calling aforesaid, and that the defendant, maliciously contriving to defame the plaintiff, and injure him in his trade, on, &c. in a certain discourse, which the defendant then and there had with one N. C., and other good citizens, of and concerning the plaintiff in his said business and calling as a trader and vender of merchandize as aforesaid, and with the malicious intention and contrivance aforesaid, did falsely and maliciously say, speak, and publish, of and concerning the plaintiff in his calling and business and occupation aforesaid, these false, slanderous, malicious, and defamatory words following, that is to say: You have done well in dissolving partnership with him, for if you had gone on with him for two years, he would have ruined you. He has hurt me a good deal, by taking, (meaning fraudulently and dishonestly taking,) things, (meaning goods,) that he has not accounted for. We have sold goods to a great amount since we have traded together, and have sold them

at a profit, and have made nothing, and I can account for it in no other way than that he has taken, (meaning fraudulently and dishonestly taken,) things, (meaning goods,) without accounting for them. He has taken, (meaning taken as aforesaid,) a great deal of goods and money. You may depend upon it they, [the plaintiff and his brother,] are both very dishonest fellows, (meaning dishonest in the business and calling aforesaid.) There were other averments and inuendos, explaining the sense of the words used, which are not necessary to be stated.

Harris
vs.
Burley.

After a verdict for the plaintiff, the defendant moved in arrest of judgment, upon the ground that the foregoing inuendos enlarged the sense of the words.

Jos. Bell, Quincy, and Weeks, for the defendant, cited *Selw. N. P.* 1064; 6 *D. & E.* 694, *Holt vs. Scholefield*; 1 *Chitty's Pl.* 383; *Cowp.* 684, *Rex vs. Horne*; 3 *Saund. Rep.* 307.

Bartlett, and Rogers, for the plaintiff, cited 5 *Wend.* 263, *Ostrom vs. Calkins*; 17 *Johns.* 217, *Burtch vs. Nickerson*.

PARKER, J. It has sometimes been thought necessary to explain by inuendo almost every word set forth in a declaration for slander; and where the language was most simple, and from the context not liable to be misunderstood, the record has been overloaded with inuendos. It is undoubtedly best in all cases of doubt to insert an inuendo, in order clearly to affix the slanderous meaning of the words uttered; but where the interpretation of the language used is apparent of itself, an inuendo is useless. 8 *Mass. Rep.* 255, *Walker vs. Winn*. The only office of the inuendo is to state the meaning of what precedes it, so as to show, upon the face of the declaration, the precise slander which has been uttered by the defendant. *Cowp.* 277, *Peake vs.*

Harris
vs.
Burley.

Oldham; 5 East 463, *Woolnoth vs. Meadows*; 9 East 93, *Roberts vs. Camden*. And if this can appear only by reference to other facts, not set forth in the words themselves, such facts must be introduced into the declaration by way of averment or recital, as a foundation for the inuendo. *Cowp.* 683, *Rex vs. Horne*; 5 *Johns. Rep.* 221, *Van Vechten vs. Hopkins*. It is only necessary, however, to aver so much as will serve to show, that the language used conveyed the imputation relied on as the foundation of the action.

In the present case it is contended that the inuendo enlarges the sense, in setting forth that by the allegation that the plaintiff had taken things, the defendant meant that the plaintiff had fraudulently and dishonestly taken goods; and it is argued, that there should have been an averment, that there was a colloquium respecting the plaintiff's having fraudulently taken goods.

That the plaintiff had "taken things," certainly does not, standing alone, and by the mere force of the expression, import that he had fraudulently taken goods; and unless there is something in the precedent averments, or in the context, by which this alleged meaning is upheld, the inuendo has enlarged the sense of the words. But if this part of the language used, taken in connexion with the other words set forth as having been used at the same time, and the preceding averments, might naturally import the sense affixed to it by the inuendo, without the aid of other matter not appearing in the declaration, then the inuendo is not objectionable.

The declaration alleges in substance that the plaintiff was a trader, and that the defendant, contriving to defame and injure him in his trade, in a conversation of and concerning the plaintiff in his business as a trader, spoke and published of him, in his said calling and business, certain words, and among them, that the person to whom he was speaking had done well in dissolving partnership with the plaintiff, for if

he had gone on the plaintiff would have ruined him—that he had hurt the defendant a good deal, by taking things that he had not accounted for—that the defendant and the plaintiff had sold goods to a great amount while they traded together, and at a profit, and had made nothing, and he could account for it in no other way than that the plaintiff had taken things without accounting for them—that he had taken a great deal of goods and money—and that he was a dishonest fellow. From the context there seems to be no additional averment necessary in order to explain the words in the sense in which the inuendo explains them. It does not enlarge the sense. There can hardly be a doubt raised, from the language itself, used in relation to the plaintiff as a trader, that by the assertion that he had taken things that he had not accounted for, the defendant intended to charge him with having fraudulently and dishonestly taken them. It was alleged at the same time that this was the only way that the defendant could account for the fact that they had not made any thing—that plaintiff had taken a great deal of goods and money—was dishonest—had hurt the defendant—and would have ruined the witness if he had not dissolved partnership with him.—It would be an unnatural construction to suppose that this related to a taking of goods lawfully, or by mistake. And it cannot be necessary, under such circumstances, to insert an averment of a colloquium concerning the plaintiff's having fraudulently taken goods. It is sufficient that it is averred that there was a colloquium of and concerning the plaintiff in his business as a trader, and that the words were uttered concerning him in his said business and calling. The context shows that the conversation must have been of his having fraudulently taken goods. *Cowp.* 686; 3 *Saund.* 307, note; 17 *Johns.* 217, *Burtch vs. Nickerson.*

Similar remarks are applicable to the inuendo, that by dishonest fellow was meant dishonest in the business of a trader. In a conversation averred to have been concerning

Gordon
vs.
Shurtliff.

the plaintiff as a trader, words, averred to have been spoken of him in his said business, impute to him conduct of a dishonest character while engaged in trade with the defendant ; and when the defendant, (speaking of the plaintiff as a trader,) closed with the declaration that he was a dishonest fellow, it is very naturally explained as meaning that he was dishonest in his business as a trader. The whole matter is to be taken together. *4 Barn. & Ald. 314, The King vs. Burdett.* The jury have found that such was the meaning, and there must, therefore, be

Judgment on the verdict.

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GORDON vs. SHURTLIFF.

The mere oral assertion by an individual, that he has done a particular act, cannot be received as evidence in his favor, in a subsequent suit, such declaration not being in collision with his interest at the time.

ASSUMPSIT upon a promissory note, dated October 27, 1827, for the sum of \$50, payable to one Samuel Ross, or order, on demand, with interest, and by him endorsed to the plaintiff. Upon the trial it was admitted that said Ross was the plaintiff in interest.

The defence was payment, to prove which the defendant offered one Wetherell as a witness, who testified that the defendant, in the fall of 1827, being then a trader in Bath village, held a note against him, on which there was then due about \$53,—that, as he was returning from Boston, he met the defendant, in the road near the village, who told him he had been waiting for his return to get the money, and had borrowed fifty dollars of said Ross, and left his note with Ross, and wished him to pay Ross the \$50,—that