

Legislative Council.

No. , 1898.

A BILL

To consolidate and amend the law of Defamation.

[MR. WANT;—30 June, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5

Actions and criminal informations.

1. Subject to the provisions of this Act the right of action for oral slander extends to all defamatory words for which an action might before the twenty-fourth day of August, one thousand eight hundred and forty-seven, have been maintained if the same were reduced into writing; and all the rules then in force relating to actions for libel, so far as they are applicable, may be applied in all actions for such defamatory words.

Right of action for written slander extends to oral slander.

[11 Vic. No. 13, s. 1.]

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Declaration in libel
and slander.

[17 Vic. No. 21, s.
56.]

2. In any action for defamation the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander, and where the words or matter set forth with or without the alleged meaning show a cause of action, the declaration shall be sufficient. 5

Obscene matter need
not be set out.

[51 & 52 Vic., c. 64,
s. 7.]

3. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other document containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding. 10 15

Order of Judge
required for prosecution
of newspaper.

[51 & 52 Vic., c. 64,
s. 8.]

4. No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of any newspaper for any libel published therein without the order of a Judge of the Supreme Court first had and obtained. 20

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

Civil and criminal defences and evidence in mitigation of damages. 25

Where plaintiff's
character not likely
to be injured thereby.

[11 Vic. No. 13, s. 2.]

5. On the trial of any action for defamatory words not imputing an indictable offence, the jury, under the plea of not guilty, may consider whether the words set forth in the declaration were spoken on an occasion when the plaintiff's character was likely to be injured thereby, and if they are of opinion that the said words were spoken on an occasion when the plaintiff's character was not likely to be injured thereby, may find a verdict for the defendant. 30

Money may be paid
into Court.

[50 Vic. No. 26., s. 2.]

6. In any action for defamation, the defendant, or one or more of several defendants, may pay into Court a sum of money by way of compensation, satisfaction, and amends. 35

Defence of truth of
matters charged in
civil action.

[11 Vic. No. 13, s. 4.]

7. In any action for defamation, the truth of the matters charged shall not amount to a defence to such action unless it was for the public benefit that the said matters should be published.

Where the truth of the said matters is relied upon as a defence to such action it shall be necessary for the defendant, in his plea of justification, to allege that it was for the public benefit that the said matters should be published, and the particular facts by reason whereof it was for the public benefit that the said matters should be published, 40

published, and unless the said allegation is made out to the satisfaction of the jury, as well as the truth of the said matters, the plaintiff shall be entitled to recover a verdict with such damages as the jury may think proper.

5 8. On the trial of any indictment or information for the publica-
tion of a libel (the defendant having pleaded such plea as hereinafter
mentioned), the truth of the matters charged may be inquired into, but
shall not amount to a defence unless it was for the public benefit that
the said matters should be published.

Defence of the truth
of matters charged
on the trial of an
indictment or
information for libel.
[11 Vic. No. 13,
s. 10.]

10 To entitle the defendant to give evidence of the truth of the said
matters as a defence to such indictment or information, it shall be
necessary for the defendant in pleading to the said indictment or
information to allege the truth of the said matters in the manner
required in pleading a justification to an action for defamation, and
15 further to allege that it was for the public benefit that the said matters
should be published, and the particular facts by reason whereof it was
for the public benefit that the said matters should be published, to
which plea the prosecutor may reply, generally denying the whole
thereof.

20 If after such plea the defendant is convicted on such indictment
or information, the Court may, in pronouncing sentence, consider
whether the guilt of the defendant is aggravated or mitigated by the
said plea and by the evidence given to prove or to disprove the same :

25 The truth of the said matters shall in no case be inquired into
without such plea of justification :

In addition to such plea, the defendant may plead a plea of not
guilty.

9. A fair and accurate report in any newspaper of proceedings
publicly heard before any Court exercising judicial authority shall, if
30 published contemporaneously with such proceedings, be privileged :

Newspaper reports
of proceedings in
Court privileged.
[51 & 52 Vic.,
c. 64, s. 3; 11 Vic.
No. 13, s. 5.]

Provided that nothing in this section shall authorise the publi-
cation of any blasphemous, seditious, or indecent matter or of any
judicial proceedings which are not concluded and which the presiding
judge may declare that it would be improper to publish at their then
35 stage.

10. A fair and accurate report published in any newspaper of
the proceedings of a public meeting, or (except where neither the
public nor any newspaper reporter is admitted) of any meeting of a
municipal council or local authority formed or constituted under the
40 provisions of any Act of Parliament, or of any committee appointed
by any of the above-mentioned bodies, or of any meeting of any
commissioners authorised to act by letters patent, Act of Parliament, or
other lawful authority, or of any select committee of either House of
Parliament, and the publication at the request of any Government
45 office or department or minister of the Crown, or at the request of the
inspector

Newspaper reports
of proceedings of
public meetings
privileged.
[51 & 52 Vic.,
c. 64, s. 4.]

inspector general of police, of any notice or report issued by them for the information of the public, shall be privileged, unless it be proved that such report or publication was published or made maliciously :

Provided that nothing in this section shall authorise the publication of any blasphemous, seditious, or indecent matter : 5

Provided also that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction of such report or other publication, and has refused or neglected to insert the same : 10

Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege conferred by this Act or now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit. 15

For the purposes of this section "public meeting" means any meeting bonâ fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. 20

Proceedings for
publication of papers
printed by order of
the Legislative
Council or Legislative
Assembly.

[13 Vic. No. 16, s. 7.]

11. (1) A defendant in any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any report, papers, votes or proceedings of the Legislative Council or Legislative Assembly, may bring before the Court in which such proceeding has been so commenced or prosecuted, or before any Judge of the same (first giving twenty-four hours' notice of his intention so to do to the plaintiff or prosecutor in such proceeding) a certificate under the hand of the President of the Legislative Council or the Speaker of the Legislative Assembly, or of the Clerk of the Legislative Council or Legislative Assembly, stating that such report, paper, votes or proceedings, as the case may be, was published by or under the authority of the Legislative Council or Legislative Assembly or a committee thereof, as the case may be, together with an affidavit verifying such certificate. 25 30 35

Such Court or Judge shall thereupon stay such proceeding, and the same and every writ and process issued therein shall be thereby finally put an end to, determined, and superseded.

Proceedings for
publication of a copy.
[13 Vic. No. 16, s. 8.]

(2) In case of any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant may at any stage of the proceeding lay before the Court or Judge such report, paper, votes or proceedings, and such copy with an affidavit verifying such report, paper, votes or proceedings and the correctness of such copy. 40 45

The

The Court or Judge shall thereupon stay such proceeding, and the same and every writ of process issued therein shall be thereby finally put an end to, determined, and superseded.

5 commenced or prosecuted for printing any extract from, or abstract of, such report, paper, votes or proceedings, to give in evidence under the general issue such report, paper, votes or proceedings, and to show that such extract or abstract was published bonâ fide and without malice; and if such be the opinion of the jury a verdict of not guilty shall be
10 entered for the defendant.

Extract or abstract privileged if published bonâ fide and without malice. [13 Vic. No. 16, s. 9.]

12. Where, upon the trial of any indictment or information for the publication of a libel, evidence is given under the plea of not guilty which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, such
15 defendant may prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part.

Evidence to rebut primâ facie case of publication by an agent. [11 Vic. No. 13, s. 11.]

13. Where a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper is charged before
20 justices of the peace for a libel published in such newspaper, the justices may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any matter which under this or any other Act, or
25 otherwise might be given in evidence by way of defence by the person charged on his trial or indictment; and the justices, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Evidence admissible in inquiry by Court of summary jurisdiction. [44 & 45 Vic., c. 60, s. 4.]

30 14. If justices of the peace upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein, are of opinion that though the person charged is shown to have been guilty, the libel was of a trivial character, and that the offence may be
35 adequately punished by virtue of the powers of this section, the justices shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect, "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?" and if such person assents to the
40 case being dealt with summarily, the justices may summarily convict him and adjudge him to pay a fine not exceeding *fifty* pounds.

Summary conviction for libel. [44 & 45 Vic., c. 60, s. 5.]

15. At the trial of an action for a libel contained in any newspaper, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought
45 actions for damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Mitigation of damages. [51 & 52 Vic., c. 64, s. 6.]

Offer of an apology
admissible in
evidence in
mitigation of
damages.

[11 Vic. No. 13, s. 3.]

16. In any action for defamation, the defendant may (after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action) give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action has been commenced before there was an opportunity of making or offering such apology. 5

Nothing herein to
prejudice effect of
plea of not guilty.

[11 Vic. No. 13, s. 10.]

17. Nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty, which the defendant may now make under such plea to any action, indictment, or information for defamatory words or libel. 10

Trial, costs, and execution.

Consolidation of
actions.

[51 & 52 Vic., c. 64,
s. 5.]

18. It shall be competent for the Court or a Judge, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same or substantially the same libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated. 20

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they have so found between and against the said last-mentioned defendants; and the Judge at the trial, if the plaintiff is entitled to the costs of the action, shall make such order as he may deem just for the apportionment of such costs between and against such defendants. 25 30

Verdict for plaintiff
for less than forty
shillings not to carry
costs.

[50 Vic. No. 26, s. 1.]

19. If in any action for defamation a verdict is returned in favour of the plaintiff for damages in any sum less than forty shillings the plaintiff shall have judgment to recover such sum only, and shall not have judgment to recover any costs unless the Judge in any case of libel certifies that the words charged as defamatory were published without reasonable grounds or excuse. 35 40

Defendant's and
plaintiff's costs on
private prosecution.

[11 Vic. No. 13, s. 12.]

20. If in the case of an indictment or information by a private prosecutor for the publication of a libel judgment is given for the defendant he shall be entitled to recover from the prosecutor the costs sustained by him by reason of such indictment or information. 40

If

Defamation.

If the issue upon a special plea of justification to such indictment or information is found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by him by reason of such plea.

5 The costs so to be recovered by the defendant or prosecutor respectively shall be taxed by the proper officer of the Court before which the said indictment or information is tried.

21. Where, in a civil or criminal proceeding for the publication of a libel, judgment is given against any defendant, the plaintiff or
10 prosecutor may, under his writ of execution, levy the costs, damages, penalty, and expenses named therein out of the whole of the types, presses, or printing materials belonging to the person whose types, presses, or printing materials or any part thereof have been used in printing such libel, as well as out of the property of the
15 defendant on the record.

Plaintiff having obtained judgment may levy costs out of types used in printing libel. [11 Vic. No. 13, s. 13.]

Application of Act, supplemental and repeal.

22. No defendant in any proceeding, civil or criminal, for the publication of any printed matter alleged to be libellous, shall be able to avail himself of any of the benefits or advantages of this Act, unless
20 at the time of the publication of the alleged libel, all the provisions made by law for regulating the printing and publication of newspapers and papers of a like nature or of the trade of printing generally applicable to such a work as that in which the alleged libel was printed have been complied with, but such defendant shall nevertheless
25 be bound by the other parts of this Act. Any specified non-compliance with such provisions shall be a good answer to any pleading under this Act.

Benefits of this Act not to extend to defendant, who has not complied with the requirements of the laws regulating the publication of newspapers. [11 Vic. No. 13, s. 15.]

23. The Acts specified in the Schedule to this Act are hereby
30 repealed to the extent therein indicated. But references in any Statute to any provisions of the Act eleventh Victoria number thirteen hereby repealed shall be construed as references to those provisions as re-enacted in this Act, with or without modification.

Repeal.

24. In this Act, unless the context otherwise requires—
35 “Jury” includes a District Court Judge sitting for the determination of questions of fact in an action in a District Court.

Definitions. [44 & 45 Vic., c. s. 1.]

40 “Newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations thereon, printed for sale and published in New South Wales, periodically or in parts or numbers, at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed and made public, weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements.

“Proprietor”

“Proprietor” means and includes as well the sole proprietor of any newspaper, as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person. 5

Short title.

25. This Act may be cited as the “Defamation Act, 1898.”

SCHEDULE.

Act.	Title of Act.	Extent of repeal.	
11 Vic. No. 13 ...	An Act to amend the law respecting defamatory words and libel.	Sections 1 to 6, sections 8 to 13, and section 15.	10
13 Vic. No. 16 ...	An Act to amend the law of evidence and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a Committee thereof.	Sections 7, 8, and 9.	15
17 Vic. No. 21 ...	The Common Law Procedure Act of 1853 ...	Section 56.	20
50 Vic. No. 26 ...	An Act to amend the law relating to libel and slander.	The whole.	

Synopsis of the Defamation Bill, 1898.

THE Bill consolidates the provisions of our Defamation Acts 11 Vic. No. 13 and 50 Vic. No. 26 (except such of those provisions as more properly belong to other branches of the Statute law), together with certain provisions of the Statute law relating to evidence and procedure in actions of libel and slander; it also amends the law by the addition of certain provisions of the Imperial Newspaper Libel Act of 1881 (44 and 45 Vic., c. 60) and the Libel Amendment Act of 1888 (51 and 52 Vic., c. 64).

The following is a summary of the new matter introduced.

Clause 3 is a copy of section 7 of the Act of 1888, and overrules the decision in Bradlaugh's case that the obscene passages charged in a prosecution for an obscene libel must be set out in the indictment.

Clause 4 follows section 8 of the Act of 1888, in providing that the order of a judge in chambers must be procured before taking criminal proceedings against a newspaper for libel. The former Imperial law contained in section 3 of the Act of 1881 required the approval of the Director of Public Prosecutions.

Clauses 9 and *10* follow sections 3 and 4 of the Act of 1888, by enacting that fair and accurate reports in newspapers of judicial proceedings and proceedings at public meetings shall be privileged. Section 3 of the above Act is new, and to a certain extent is declaratory of the law. Section 4 amplifies section 2 of the Act of 1881. In the provisos to those clauses the word "seditious" has been added after the word "blasphemous," thereby providing that the clauses shall not authorise the publication of seditious matter. The omission is noticed in Odgers on Libel and Slander, page 294.

Clause 13 follows section 4 of the Act of 1881, and enables a defendant charged before magistrates with the publication of a libel in a newspaper to rely on the same defences as would be open to him on his trial, overruling pro tanto, *R. v. Carden* (5 Q. B. D. 1).

Clause 14 follows section 5 of the Act of 1881, and also deals with publications in newspapers. It authorises the magistrates to deal with trivial offences in a summary way, by imposing a fine not exceeding £50.

Clause 15 follows section 6 of the Act of 1881, and relates to actions against proprietors of newspapers. It allows evidence that the plaintiff has recovered or brought actions for damages or received compensation in respect of a similar libel to be given in mitigation of damages.

Clause 18 follows section 5 of the Act of 1888, and provides for the consolidation of actions by the same plaintiff in respect of substantially the same libel.

The Bill does not codify the law of defamation, as was done in the Queensland Act of 1889 (53 Vic. No. 12); neither does it (nor does the Queensland Act) constitute the offence of publishing blasphemous, seditious, or obscene libels. Those offences are misdemeanours at Common Law, and it would appear that the Imperial Acts 9 and 10 W. III, c. 35, relating to blasphemous libels, and 60 Geo. III and 1 Geo. IV, c. 8, relating to blasphemous and seditious libels are in force in the Colony.

Defamation Act, 1898.

ARRANGEMENT OF SECTIONS.

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 7. Defence in civil action of truth of matters charged.
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 11. Proceedings for publication of Parliamentary papers.
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Defamation Act, 1898.

ARRANGEMENT OF SECTIONS.

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